No. 735

APPENDIX FOR APPELLANTS

Office-Supreme Court, U.S.
FILED
JAN 20 1958
JOHN T. FEY, Clerk

IN THE

United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 7486

OCTOBER TERM, 1957

IRENE R. THOMAS and BENEDICT F. FITZ GERALD,
Appellants,

vs.

BILLIE SMITH CASSIDY,
Appellee.

In Re Denial of Benedict F. FitzGerald for Admission *Pro Hac Vice.*

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT ALEXANDRIA

FILED
SEP 3 - 1957
R. M. F. WILLIAMS, JR.
CLERK

ALBERT J. AHERN, JR.,
National Press Building,
Washington, D. C.,
JAMES J. LAUGHLIN,
National Press Building,
Washington, D. C.,
Counsel for Appellants.

BATAVIA TIMES LAW PRINTERS,
BATAVIA N. Y.

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IN THE

United States District Court

FOR THE

EASTERN DISTRICT OF VIRGINIA

—o—

MRS. IRENE R. THOMAS, 10015 Markham Street, Silver Spring, Maryland, *Plaintiff*,

v.

BILLIE SMITH CASSIDY, 521 Ripley Street, Alexandria, Virginia, *Defendant*.

Civil Action No. 1245.

—o—

Complaint—Damages.

(Filed November 1, 1955.)

1. This is an action for alienation of affections and for criminal conversation to recover more than $3,000.00 exclusive of costs. Plaintiff is a citizen of Maryland residing at 10015 Markham Street, Silver Spring, Maryland, and the defendant is a resident of Virginia, residing at 521 Ripley Street, Alexandria, Virginia.

2. On the seventeenth day of August, 1940, the plaintiff and one Jay Harry Thomas, Jr. were lawfully married and joined in the bonds of matrimony at Welfleet, within the Commonwealth of Massachusetts.

Complaint—Damages.

3. Prior to and at the time of the said marriage and for a long time thereafter, the plaintiff's husband, Jay Harry Thomas, Jr. held for the plaintiff a deep and genuine love and affection and was happy and proud in his love for her and their seven year old son, Jay Thomas, III. And the plaintiff during all the time subsequent to said marriage has felt for her said husband, a deep and genuine and abiding affection and love which is true, constant and unaffected.

4. That until the said defendant began to invade the rights of this plaintiff and her husband in their relationship as husband and wife, as hereinafter set forth, the plaintiff and her husband were happy in their married life and were joyous and contented in their natural hopes and plans for a future home, life, and happiness and were happy and satisfied in the conjugal society, affection, assistance, and love which they found together.

5. That approximately one year ago the defendant, contriving willfully, knowingly, wrongfully, unjustly, and maliciously intending to injure, prejudice and aggrieve this plaintiff in her enjoyment of the companionship, happiness, and love of her husband, and with hostile, wicked and malicious intent to destroy and deprive this plaintiff of her conjugal right to the society, affection, and assistance of her husband, did knowingly, wrongfully, willfully, and maliciously and with a ruthless disregard and reckless indifference to the rights of this plaintiff, and absolutely without justification, invade the rights of this plaintiff and her husband in their relationship as husband and wife, setting about a course of action and speech which was knowingly, purposely, wrongfully, ruthlessly,

wickedly and maliciously designed and planned to alienate and destroy the genuine love and affection which this plaintiff's husband held for her, and to wreck and destroy the home of this plaintiff and her husband.

6. The defendant corresponded with the plaintiff's husband, declaring her love for him and expressing the fact that there has never been a love like theirs, and that she would protect it always, indicating that she was miserable when the plaintiff's husband was away from her. The defendant frequently called the plaintiff's husband on the telephone directing him when and where to meet her and in response to said calls, they would go off together and spend weekends at hotels and resorts, the defendant registering as Mrs. Jay Thomas. This practice on the part of the defendant became so brazen that she finally induced the plaintiff's husband to remain overnight with the defendant at the latter's residence in Virginia for long periods of time.

7. The genuine and true love, affection, and devotion which this plaintiff's husband bore her at the time of their marriage and for sometime thereafter, and his enjoyment of and genuine desire for her companionship and love have been alienated, crushed, and completely destroyed and that this plaintiff's husband no longer holds for her any love or affection whatsoever, nor has he any desire or wish whatsoever for her companionship, love or assistance.

8. The wrongful and malicious acts of the defendant, engaged in by her knowingly, unjustly, and willfully, and with unjustified, hostile, wicked and ruthless intent, and in utter and reckless disregard for this plaintiff's rights, have contributed to, procured, produced, brought about and were

the direct and proximate cause of the total loss, alienation and destruction of the true and genuine love and affection of this plaintiff's husband for her.

9. As a proximate result of the wrongful and malicious acts of the defendant, herein complained of, and as a direct consequence of her reckless and unjustifiable disregard for this plaintiff's rights, this plaintiff has been wrongfully and cruelly deprived and robbed of her conjugal right to the society, love and affections of her husband and of his companionship and assistance; and that her home and her happiness in life have been completely and hopelessly wrecked, destroyed, and taken from her, that her plans hopes and aspirations for herself and her rightful husband have been ruthlessly snatched from her and rendered impossible of fulfillment and that her life has been left completely empty and devoid of the love and consortium of her said husband and of the happiness which she formerly possessed by reason thereof and to which she is entitled that she has been deeply aggrieved and depressed and has suffered untold and inescapable embarrassment, humiliation, and loss of standing among her friends, associates and relatives, that she has been made to suffer cruel and excruciating mental anguish, harassment and despair, and that she will continue to be wretched, distraught and deeply distressed by her immeasurable loss and wrongful treatment, all to her great and serious loss in the sum of $100,000.00.

WHEREFORE, plaintiff demands judgment against the defendant in the sum of $100,000.00 besides costs.

A trial by jury is demanded.

Notice to Take Deposition Pursuant to Rule 30 FRCP.

Executed at Washington, D. C. this 1st day of November, 1955.

IRENE R. THOMAS,

By her Attorneys.

(Sig.) BENEDICT F. FITZGERALD, JR.,
1152 National Press Bldg.,
Washington 4, D. C.

(Sig.) OLIVER L. ONION,
1152 National Press Building,
Washington 4, D. C.

Filed: 11-1-1955.

Notice to Take Deposition Pursuant to Rule 30 FRCP.

(Filed November 21, 1955.)

To: Billie Smith Cassidy
521 Ripley St.
Alexandria, Va.

Please take notice that at 10 a. m., on the 25th day of November, 1955, at Room 309 Post Office Building, corner of Prince and Washington Streets, Alexandria, Virginia, the plaintiff in the above-entitled action will take the deposition of the defendant, BILLIE SMITH CASSIDY, 521 Ripley Street, Alexandria, Virginia, upon oral examination pursuant to the Federal Rules of Civil Procedure, before Ceil Wilson, a notary public, in and for the Commonwealth of Virginia, who is not of counsel or attorney for

either of the parties, nor a relative, or employee of such counsel, nor financially interested in this cause.

You are hereby notified to appear and take such part in said examination, as you be advised and shall be fit and proper.

IRENE R. THOMAS,

By her Attorneys:

(sig) BENEDICT F. FITZGERALD, JR.,
Suite 1152 National Press Building,
Washington 4, D. C.

(sig) OLIVER LLOYD ONION,
126 South Royal,
Alexandria, Virginia.

SERVICE

I, OLIVER ONION, attorney for plaintiff in the above-entitled action, hereby certify that on the 21st day of November, 1955, I served the above notice upon Billie Smith Cassidy, the defendant, by depositing a copy in the U. S. Mail, addressed to her at 521 Ripley Street, Alexandria, Virginia.

(sig) OLIVER L. ONION.

Filed: November 21, 1955.

Answer.

(Filed November 21, 1955.)

Comes now Billie Smith Cassidy, Defendant in proper person, and denies generally the allegations of the complaint and demands strict proof thereof, and specifically as to:

Paragraph 1. of the complaint—admits the allegations as far as *the residence* of the Defendant.

Paragraph 2.—Unknown.

Paragraph 3.—Denies the allegations.

Paragraph 4.—Denies the allegations.

Paragraph 5.—Denies the allegations.

Paragraph 6.—Denies the allegations.

Paragraph 7.—Neither admits nor denies the allegations, in fact, unknown.

Paragraph 8.—Denies the allegations.

Paragraph 9.—Denies the allegations.

The Defendant states that the complaint fails to state a cause of action from which relief can be granted. Executed at Alexandria, Va. this 19th day of November, 1955.

BILLIE SMITH CASSIDY,
/s/ BILLIE SMITH CASSIDY.

A True Copy, Teste:
Walkley E. Johnson, *Clerk.*

By Earl C. Sheldon,
Deputy Clerk.

(SEAL)

Motion for Leave to Withdraw Appearance.

(Filed .)

Comes now Oliver Lloyd Onion, resident Associate Counsel for the plaintiff, Mrs. Irene R. Thomas, in the above entitled cause, and moves this Honorable Court that he be granted leave of the Court to withdraw his appearance as counsel in said cause, without prejudice to the plaintiff or her counsel to obtain other resident associate counsel, and for reason therefor states that Benedict F. Fitzgerald, counsel for plaintiff has expressed his consent orally to said withdrawal of appearance.

OLIVER LLOYD ONION,
Resident Associate Counsel for Plaintiff,
126 S. Royal Street,
Alexandria, Virginia.

POINTS AND AUTHORITIES

1.) Rule 9 (5) of the Rules of the United States District Court for the Eastern District of Virginia.

OLIVER LLOYD ONION.

SERVICE

I, Oliver Lloyd Onion, Associate Resident Counsel for the plaintiff in the above entitled cause, hereby certify that on the 25th day of November, I served the above Motion, together with Points and Authorities, and the an-

Notice of Motion.

nexed Notice upon Benedict F. Fitzgerald, Jr., Counsel for Plaintiff, and upon Mrs. Irene R. Thomas, plaintiff, by mailing a copy thereof, postage prepaid, to Benedict F. Fitzgerald, Jr., Esquire, National Press Building, Washington 4, D. C., and a copy of Mrs. Irene R. Thomas, 10015 Markham Street, Silver Spring, Maryland.

OLIVER LLOYD ONION.

Notice of Motion.

(Filed November 25, 1955.)

To: Benedict F. Fitzgerald, Jr.,
National Press Building,
Washington 4, D. C.,
and
Mrs. Irene R. Thomas,
10015 Markham Street,
Silver Spring, Maryland.

Please take notice that the undersigned will bring the annexed Motion for Leave to Withdraw Appearance, filed herein by the undersigned, on for hearing before the United States District Court for the Eastern District of Virginia, Alexandria Division, on the 29th day of November, 1955, at 10:00 o'clock in the forenoon of that day or as soon thereafter as Counsel can be heard.

OLIVER LLOYD ONION,
Resident Associate Counsel for Plaintiff,
126 S. Royal Street,
Alexandria, Virginia.

Order Granting Leave to Withdraw Appearance.

(Filed .)

The motion for an order granting leave to withdraw appearance as resident associate counsel herein, this day came on to be heard; and thereupon, upon consideration thereof, it is by the Court:

ORDERED that Oliver Lloyd Onion be and he hereby is granted leave to withdraw his appearance as resident associate counsel herein, without prejudice to plaintiff or her counsel to obtain other resident associate counsel.

Dated at Alexandria, Virginia this 29 day of November, 1955.

(Sgd.) ALBERT V. BRYAN,
United States District Judge.

A True Copy, Teste:
Walkley E. Johnson, *Clerk.*

By Peggy R. Macdonald,
Deputy Clerk.

Requested by:
Oliver Lloyd Onion,
126 South Royal Street,
Alexandria, Virginia.

Notice to Take Deposition Pursuant to Rule 30 FRCP.

(Filed .)

To: Billie Smith Cassidy
521 Ripley Street
Alexandria, Virginia

Please take notice that at 10:30 a.m. on the 20th day of December, 1955, at the George Mason Hotel, Washington and Prince Streets, Alexandria, Virginia, the plaintiff in the above-entitled action will take the deposition of BILLIE SMITH CASSIDY, 521 Ripley Street, Alexandria, Virginia, upon oral examination pursuant to the Federal Rules of Civil Procedure, before Frances Webb, a Notary Public for the Commonwealth of Virginia, 1430 North Uhle Street, Arlington, Virginia, who is not of counsel or attorney for either of the parties, nor a relative, or employee of such counsel, nor financially interested in this cause.

The oral examination will continue from day to day until completed. You are hereby notified to appear and take such part in said examination, as you may be advised and shall be fit and proper.

(sig.) IRENE R. THOMAS, *pro. se*

Dated At Alexandria,
Virginia this 25th
day of November, 1955.

Letter, Dated December 8, 1955, from Judge Bryan to Earl C. Fletcher, Deputy Clerk, Regarding Mr. Onion's Withdrawal from the Case.

Letter, Dated December 8, 1955, from Judge Bryan to Earl C. Fletcher, Deputy Clerk, Regarding Mr. Onion's Withdrawal From the Case.

(Filed .)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria, Virginia

Chambers of
Albert V. Bryan
District Judge

December the Eighth, 1955.

Re: Thomas v. Cassidy, C/A 1245
Earl C. Fletcher, Esquire,
Deputy Clerk, U. S. District Court,
Alexandria, Virginia.

Dear Mr. Fletcher:

A few days ago I entered an order allowing Mr. Oliver Lloyd Onion to withdraw as resident counsel in this case, but the record shows no substitution for him. However, notices of taking depositions, as well as interrogatories accompanying them, were filed here yesterday, apparently by the plaintiff pro se. Of course, a party has the right to conduct her own case, but because the name of Mr. Benedict F. Fitzgerald, jr., a non-resident attorney, appears on the papers filed, I presume that he prepared them and is participating, or intends to participate, in the depositions.

Letter, Dated December 8, 1955, from Judge Bryan to Earl C. Fletcher, Deputy Clerk, Regarding Mr. Onion's Withdrawal from the Case.

For fear that Mr. Fitzgerald may be acting under a misunderstanding, I think you should call his attention to Rule 9 of this court. Issuing deposition notices, obtaining subpoenas or general prosecution of interrogatories in a case pending in this court by an attorney not admitted, generally or specially, to practice here would seem to constitute a violation of Rule 9.

So you can send a copy of this letter to Mr. Fitzgerald and the plaintiff for their information. I have made you several copies.

Faithfully yours,

(sgd.) ALBERT V. BRYAN

Letter, Dated December 9, 1955, from Benedict F. FitzGerald, Jr., to Judge Bryan, Concerning Mr. Onion's Withdrawal.

Letter, Dated December 9, 1955, from Benedict F. FitzGerald, Jr., to Judge Bryan, Concerning Mr. Onion's Withdrawal.

(Filed December 12, 1955.)

BENEDICT F. FITZGERALD, JR.
Counsellor at Law
National Press Building
Washington 4, D. C.

December 9, 1955

Hon. Albert V. Bryan, District Judge
United States District Court for the
Eastern District of Virginia
Alexandria, Virginia

Dear Judge Bryan:

Re: *Thomas vs. Cassidy*, C/A 1245

This office is in receipt of a copy of your letter under date of December 8, 1955 with respect to the above.

Your reference to the withdrawal of our local counsel, Oliver Lloyd Onion, Esq., formerly of this office has been noted. As a result thereof, an additional Virginia counsel has been retained, and he has been instructed to file his appearance and participate in the proceedings in conformity with the rule as you have outlined. Prior to Mr. Onion's withdrawal, on November 21, 1955 the attached motion to permit an entry of my appearance was offered for filing.

Letter, Dated December 9, 1955, from Benedict F. FitzGerald, Jr., to Judge Bryan, Concerning Mr. Onion's Withdrawal.

The motion was rejected by the clerk. I assume there is no desire to restrict counsel from Washington, D. C. from being admitted, especially in association with Virginia counsel in the conduction of this case. If there are any steps that this office should take, in addition to the retention of Virginia counsel, to qualify for participation in this case and the deposition proceedings, we would like to comply with same.

Local Virginia counsel will also be instructed to arrange for a court reference to discuss your order entered on December 7, 1955 staying the taking of the deposition of Francis E. Mumford, Deputy Clerk. On that occasion, the court will be advised in detail, as has been suggested, of the purpose and necessity of the procedure selected.

Respectfully,

BENEDICT F. FITZGERALD, JR.

By BENEDICT F. FITZGERALD, JR.

bpr Enclosure—Motion
CC: Earl C. Fletcher, Esq.

MOTION TO PERMIT ENTRY OF APPEARANCE

Now comes Oliver Lloyd Onion, Solicitor for Irene Regina Thomas, the plaintiff in the above-entitled action, and moves the court for permission to allow Attorney Benedict F. FitzGerald, Jr., Suite 1152, National Press Building, Washington 4, D. C. to enter his appearance as

Letter, Dated December 9, 1955, from Benedict F. FitzGerald, Jr., to Judge Bryan, Concerning Mr. Onion's Withdrawal.

associate counsel for the plaintiff, and as grounds for his motion alleges as follows:

1. Attorney Benedict F. FitzGerald, Jr. is a member of the Bar and licensed to practice in Massachusetts, the District of Columbia, and before the Supreme Court of the United States.

WHEREFORE, the undersigned requests that an order issue allowing Attorney Benedict F. FitzGerald, Jr. to appear and participate as an associate counsel for Irene Regina Thomas in the aforesaid proceedings.

Executed at Alexandria, Virginia this 21st day of November, 1955.

OLIVER LLOYD ONION,
126 South Royal,
Alexandria, Virginia.

Handwritten Letter, Dated January 5, 1956, from Defendant Cassidy to Judge Bryan, together with the Envelope and Enclosing the Letter of Joseph Petris.

Handwritten Letter, Dated January 5, 1956, from Defendant Cassidy to Judge Bryan, Together with the Envelope and Enclosing the Letter of Joseph Petris.

(Filed .)

AFFIDAVIT

1 3 55—
D

—o—

MRS. IRENE R. THOMAS, *Plaintiff*,
vs.
MRS. BILLIE SMITH CASSIDY, *Defendant*.

Civil Action 1245

—o—

Filed
Jan 5 1956
Walkley E. Johnson, Clerk
Eastern District of Virginia

This is a statement under oath of facts as they are in order for you to weigh better both sides of the case. Mr. Fitzgerald, attorney for plaintiff, has hounded me beyond imagination. I was forced to take my two daughters and my housekeeper and leave Virginia last November. I do not want my two daughters to be blemished by this unfair, untruthful, scandalous, and libelous prosecution. Mr. Fitzgerald drove me out of my job, in which I was trying to learn the real estate selling business, to help me and my husband get out of debt. Mr. Fitzgerald broke a window in my locked car, and forcefully entered it, trying to steal

Handwritten Letter, Dated January 5, 1956, from Defendant Cassidy to Judge Bryan, together with the Envelope and Enclosing the Letter of Joseph Petris.

evidence he imagined might be there to use in a divorce action Mrs. Irene R. Thomas against Mr. Jay H. Thomas in Maryland. This deed was witnessed accidentally by several people, but he managed to escape. A charge was made against him in Virginia. I was never served a summons to appear for a deposition. I never alienated the affections of Mr. Thomas. If he had any for her they were alienated many years ago, according to his allegations, and the fact that when Mr. Thomas and my husband and I went out for dinner on occasion he often had a date with him. My husband and I never saw his wife. Mr. Thomas repeatedly said he was supporting her, but not living with her, and that she had promised him a divorce for the past six years. Mr. Thomas never lived with my husband and me at any of our residences. He only had his car registered at 521 Ripley St., Alexandria, Virginia, but when I learned about the divorce action, and that Mr. Fitzgerald forcibly ejected Mr. Thomas and his aged mother from their home in Maryland, after she was brutally attacked by Mrs. Irene R. Thomas, I offered to let him stay at our home for a few days until he could find a place. At all times, day and night, my two daughters and housekeeper were there. I never accompanied Mr. Thomas to any Motels or Hotels. I never was with Mr. Thomas at the Cavalier Hotel in Virginia Beach on July 2 and 3, 1955. I was in Dallas, Texas due to an urgent call because of my sister's heart attack. I most assuredly did not commit adultery or become pregnant as this unscrupulous attorney alleges. Mr. Fitzgerald is the brother of Mrs. Irene R. Thomas, and I understand he is desperately trying to get evidence of any nature to use for her divorce action in Maryland. They have brutally beaten Mr. Thomas' mother.

Handwritten Letter, Dated January 5, 1956, from Defendant Cassidy to Judge Bryan, together with the Envelope and Enclosing the Letter of Joseph Petris.

They have caused Mr. Thomas to be fired from two jobs, and have forced me to leave Virginia to avoid scandal. I have not moved my husband's furniture from Virginia. My husband's deposition will prove the regard we have mutually for Mr. Thomas. I have not disregarded the process of the court. I never said I would travel to New York with Mr. Thomas. On the advice of my doctor I was told to leave Virginia in order to avoid another nervous breakdown. I had one four years ago when my father died, and we are still trying to pay off those bills. Please, Your Honor, there must be some relief for us. We cannot borrow enough money to hire a lawyer to defend me from this unjustified attack. If you must grant a judgment in default, please, weigh carefully the fact that all allegations of the plaintiff are untrue, and they want to use your decision for the divorce action pending in Maryland. Please, in any event, end this awful, unfair case that is allowed to happen in the jurisdiction of Virginia.

Respectfully submitted,

MRS. BILLIE S. CASSIDY

Sworn to & subscribed before me this 4 day of January 1956.

BURT BARR,
Notary Public Dallas
County Texas.

A True Copy, Teste:
Walkley E. Johnson, Clerk

By Peggy R. Macdonald
Deputy Clerk.

(SEAL)

Handwritten Letter, Dated January 5, 1956, from Defendant Cassidy to Judge Bryan, together with the Envelope and Enclosing the Letter of Joseph Petris.

Envelope

Joseph F. De Petris, D. O.
Internal Medicine—Heart Disease
5101 Ross Avenue
Dallas, Texas

Enclosed Letter

1/4/56—

I hearby state that Mrs. Billie S. Cassidy was in Dallas, Texas last July 2 and 3, 1955.

JOS. DE PETRIS, D. O.
MRS. HELEN W. SMITH
MRS. W. R. RUSSELL

A True Copy, Teste:
Walkley E. Johnson, Clerk

By Peggy R. Macdonald
Deputy Clerk.

(SEAL)

Letter, Dated January 16, 1956, from John R. Willett to Benedict F. FitzGerald Advising that he Represents Thomas and Expects to Represent Cassidy Very Soon—Plaintiff's Exhibit 74.

Letter, Dated January 16, 1956, from John R. Willett to Benedict F. FitzGerald Advising that He Represents Thomas and Expects to Represent Cassidy Very Soon.

(Filed January 16, 1956.)

Plaintiff's Exhibit 74.

JOHN R. WILLETT
ATTORNEY AT LAW

KI 81618 - KI 9-9229

Suite 5A-B
Alexandria National Bank Building
1705 Fern Street
Alexandria, Virginia

January 16, 1956

Benedict F. Fitzgerald, Esq.
National Press Building
Washington, D. C.

Re: Irene R. Thomas—Billie Smith Cassidy
U. S. District Court, Eastern District
of Virginia, civil action No. 1245

Dear Mr. Fitzgerald:

Please be advised that the undersigned is attorney for Mr. J. H. Thomas, and will probably represent Mrs. Cassidy within the next few days. Upon receipt of an official notification from Mrs. Cassidy, I will enter my appearance in the U. S. District Court. In the meantime, it will be

appreciated if you will direct all communications pertaining to this action to the undersigned.

Thank you for this consideration.

Very truly yours,

JOHN R. WILLETT
JOHN R. WILLETT
Attorney at Law

JRW le

Suggestion on Local Counsel.

(Filed February 28, 1956.)

Comes now the Defendant, Billie Smith Cassidy, by her counsel, and respectfully represents to the Court that the Bill of Complaint filed in the above styled cause on November 1, 1955, listed one Oliver Lloyd Onion, whose address is 126 S. Royal Street, Alexandria, Virginia, as Virginia counsel of record in this matter; that subsequent to the filing of this Complaint, Oliver Lloyd Onion withdrew as counsel, and Raymond L. Poston, Jr., Esq. entered his appearance. The Court is advised that the Virginia address for Raymond L. Poston, Jr., is listed on all of the papers as being 1121 Arlington Boulevard, Arlington, Virginia.

Counsel for the Defendant now suggests to the Court that the address at 1121 Arlington Boulevard, Arlington, Virginia, is the President Tyler Building, Arlington Towers, Arlington, Virginia, and counsel has been advised by officials that there are no professional or business offices in the President Tyler Building, Arlington Towers, Arlington, Virginia.

Suggestion on Local Counsel.

A Request for Admission of Facts and Admission of Genuineness of Document was filed on February 20, 1956, and signed by Raymond L. Poston, Jr., Esq., and yet counsel for the Defendant suggests to the Honorable Court that the official records of the Arlington Towers Apartments indicate that Raymond L. Poston, Jr., occupied a private apartment No. 820, President Tyler Building, and that the said Raymond L. Poston, Jr. vacated said apartment on February 3, 1956, and was not in fact living there subsequent to that date, and particularly on February 20, 1956.

Counsel for the Defendant has been notified by the officials of Arlington Towers, that Raymond L. Poston, Jr. left his forwarding address to be 720 Transportation Building, N. W., Washington, D. C.

J. R. WILLETT,
Billie Smith Cassidy, by counsel.

J. R. WILLETT
John R. Willett,
Counsel for Defendant,
1705 Fern Street,
Alexandria, Virginia.

I hereby certify that I have this date sent a copy of the foregoing to Raymond L. Poston, Jr., Esq., Virginia counsel for the Plaintiff, by U. S. mail, postpage prepaid, at 1121 Arlington Boulevard, Arlington, Virginia.

Dated: February 27, 1956.

J. R. WILLETT
JOHN R. WILLETT

Notice.

Notice.

(Filed March 19, 1956.)

Please take notice that the undersigned will bring the below described motions on for hearing before the U. S. District Court, Eastern District of Virginia, on such day as the Honorable Judge sets down the motions to be argued in this case.

This notice is being given to you in order that you will come to trial prepared to argue these motions.

1. Motion to strike the depositions of Colonel Robert F. Cassidy taken in Japan before C. Robert Bard, and filed in this Court on December 20, 1955, and as grounds for this motion alleges as follows: that local counsel was not present at the time of taking said depositions as required by the rules of this Court.

2. Motion to strike the depositions of Burks L. Hamner and J. A. Ponce, Cavalier Hotel, Virginia Beach, Virginia, taken on behalf of the plaintiff and filed with the Clerk of Court on February 7, 1956, for the reason that local counsel was not present at the time of taking the depositions, as required by the rules of this Court, and for the reason that the notary public did not ask the questions, but as indicated by Edward D. Harrigan at the pretrial on March 9, 1956, he asked some of the questions and Benedict F. FitzGerald asked some of the questions and that the notary public only swore the witnesses.

3. Motion to strike the motion to hold Jay Harry Thomas in contempt for refusing to comply with subpoena, for the reason that counsel in this action have agreed voluntarily that provided Mr. Thomas would submit to

the taking of depositions, that counsel for the plaintiff would dismiss the motion to hold Mr. Thomas in contempt.

In accordance with the Court's ruling on March 9, 1956, nothing further was to be done in this case until the matter pertaining to Benedict F. FitzGerald, Jr. had been disposed of other than the filing of the amended answer on the part of the defendant. At such time as the FitzGerald matter is disposed of Jay Harry Thomas will submit to the taking of his deposition.

JOHN R. WILLETT,
Billie Smith Cassidy,
by counsel.

J. R. WILLETT
John R. Willett,
Counsel for Defendant.
1705 Fern Street,
Alexandria, Virginia.

CERTIFICATE

I hereby certify that I have this 17 day of March, 1956, mailed a copy of the foregoing by U. S. Mail, postage prepaid, to Philip N. Brophy, Esq., 1006 Little Falls Street, Falls Church, Virginia, counsel for plaintiff.

Mar. 17, 1956.

J. R. WILLETT.

Letter, Dated March 29, 1956, from Benedict F. FitzGerald, Jr., to Earl C. Fletcher, Clerk, Withdrawing His Appearance.

Letter, Dated March 29, 1956, from Benedict F. FitzGerald, Jr. to Earl C. Fletcher, Clerk, Withdrawing His Appearance.

(Filed .)

March 29, 1956

Earl C. Fletcher, Clerk
United States District Court
Eastern District of Virginia
Alexandria, Virginia

Re: Thomas v. Cassidy
U. S. D. C.—E. D. Va.
Civil Action 1245

Dear Sir:

Please note the withdrawal of my appearance as counsel for the plaintiff in the above case.

Service of future notices and pleadings should be made upon Philip N. Brophy, Esq., of the firm of Donovan and Turnbull, 106 North Little Falls, Falls Church, Virginia.

Thank you for your past courtesies.

Sincerely,

BENEDICT F. FITZGERALD, JR.

By (sig.) BERNICE RUTH

cc.
Donovan & Turnbull

Letter, Dated April 2, 1956, from John R. Willett to Benedict F. FitzGerald, Jr., in Which He Indicates He will File a Slander Suit—Plaintiff's Exhibit 87.

Letter, Dated April 2, 1956, from John R. Willett to Benedict F. FitzGerald, Jr., in Which He Indicates He Will File a Slander Suit.

(Filed .)

Plaintiff's Exhibit 87.

JOHN R. WILLETT
ATTORNEY AT LAW

KI 8-1618 - KI 9-9229

Suite 5A-B
Alexandria National Bank Building
1705 Fern Street
Alexandria, Virginia

April 2, 1956

Benedict F. Fitzgerald, Jr., Esquire
National Press Building
Washington 4, D. C.

Dear Mr. Fitzgerald,

I have been endeavoring to contact you by telephone for at least 30 days but without success to discuss a Civil Action which my client, Jay H. Thomas, Jr., intends to file against you for libelous and slanderous information transmitted through the U. S. mail on February 21, 1956.

I desired to discuss this matter with you about an out of court settlement without the necessity of instituting legal action against you. Since you refused to return my calls

Letter, Dated April 2, 1956, from John R. Willett to Benedict F. FitzGerald, Jr., in Which He Indicates He will File a Slander Suit—Plaintiff's Exhibit 87.

and since I cannot discuss this matter with you, I have no recourse but to institute this action and perhaps that will compel you to give consideration to my telephone calls.

Very truly yours,

J. R. WILLETT
JOHN R. WILLETT
Attorney at Law

JRW/vps

Letter, Dated April 4, 1956, from John R. Willett to Benedict F. FitzGerald, Jr.—Plaintiff's Exhibit 88.

Letter, Dated April 4, 1956, from John R. Willett to Benedict F. FitzGerald, Jr.

(Filed .)

Plaintiff's Exhibit 88.

JOHN R. WILLETT
ATTORNEY AT LAW

KI 8-1618 - KI 9-9229

Suite 5A-B
Alexandria National Bank Building
1705 Fern Street
Alexandria, Virginia

April 4, 1956

Benedict F. Fitzgerald, Jr., Esquire
Room 1152
National Press Building
Washington 4, D. C.

Benedict F. Fitzgerald, Jr., Esquire
Apartment 317
McReynolds Apartments
705 - 18th Street, N. W.
Washington, D. C.

Dear Mr. Fitzgerald,

Submitted herewith as enclosure is a Notice to Take Deposition and the time is set forth as 3:00 P. M., April 26, 1956.

The undersigned did this date request the U. S. Marshal in the District of Columbia to serve this Notice on you at

either your residence listed herein or your office also listed above.

In addition, the undersigned personally took a copy of this Notice and had Mrs. Pully of William P. MacCracken's office personally place it on your desk in Room 1132 of the National Press Building.

In addition, the undersigned personally left at your apartment, No. 317, McReynolds Apartments, 705 - 18th Street, N. W., Washington, D. C., a copy of this Notice. A copy of this letter and Notice to Take Deposition and Certificate will be sent to both your office and your residence and I feel confident that the Court will consider this sufficient notice.

Very truly yours,

J. R. WILLETT
JOHN R. WILLETT
Attorney at Law

JRW/vps
Enclosures

Please call me about possibility of a settlement.

Motion for Order that Deposition Not be Taken.

(Filed April 19, 1956.)

Plaintiff moves the court for an order forbidding the taking of the deposition of Attorney Benedict F. FitzGerald, Jr. pursuant to the notice of examination mailed by counsel for the defendant on April 4, 1956, on the following grounds:

Motion for Order that Deposition Not be Taken.

(1) The plaintiff served a notice to take the deposition of the defendant Billie Smith Cassidy on November 21, 1955 and again on December 2, 1955, and the defendant refused to appear, but instead thereof, fled the Commonwealth of Virginia and took up a residence in Dallas, Texas. Counsel for Plaintiff has not yet received notice of when Defendant will be available for deposition, and is still unaware whether or not Defendant will appear for such deposition, and it is unequitable and unfair that Defendant be allowed to proceed with the case by the taking of depositions, when refusing to permit her own deposition to be taken.

(2) The plaintiff on December 29, 1956 filed a Motion to Strike the Defendant's Answer and Enter a Default Judgment For Failure of the Defendant To Appear for her Deposition, and no answer to that motion has been filed by the Defendant as required by local rule 13 (2) nor has the motion been disposed of by this honorable court. So long as this motion is before the court, and the Defendant refuses to appear for deposition, any further activity on the part of Defendant would be of no purpose.

(3) The Plaintiff served a notice to take the deposition of Jay H. Thomas, Jr., on November 21, 1955 and a subpoena *duces tecum* with a 2nd notice to take his deposition on December 1, 1955 but notwithstanding such service, the said Jay H. Thomas, Jr. refused to appear as directed on December 28, 1955. The Plaintiff on December 29, 1955 filed a motion to hold the said Jay H. Thomas, Jr. in contempt for failure to appear for the taking of his deposition following the service of the subpoena, and that motion has not been answered by Jay H. Thomas, Jr., or by his attorney as required by local rule 13 (2), nor has the motion been

disposed of by this honorable court. While Jay H. Thomas, Jr. is technically not a party to this suit, his interests are patently intertwined in the matter. Also it would appear from correspondence received from Attorney Willett that Mr. Thomas is represented by the counsel for the Defendant. Photostatic copies of this correspondence are attached hereto and marked for identification as follows:

(a) *Ex. 74*, letter signed by J. R. Willett, Esq., dated January 16, 1956.

(b) *Ex. 85*, letter signed by John R. Willett, Esq., dated February 28, 1956.

(c) *Ex. 86*, letter signed by J. R. Willett, Esq., dated March 5, 1956.

(d) *Ex. 87*, letter signed by J. R. Willett, Esq., dated April 2, 1956.

(e) *Ex. 88*, letter signed by J. R. Willett, Esq., dated April 4, 1956.

Under these circumstances it is not proper procedure to permit counsel for Defendant to call for depositions, while his client Thomas, refuses to honor the subpoena of this court.

(4) The Plaintiff on December 28, 1955 filed a Request for Admission of Facts, a copy of which was served on the Defendant, and said request has not been answered by the Defendant as required by Rule 36, of the Federal Rules of Civil Procedure.

(5) The Plaintiff on March 4, 1956 filed a Motion for an Order That Certain Facts as set forth in a notice to admit facts filed on February 20, 1956, be taken as established, and that motion has not been answered by the Defendant as required by local rule 13 (2) nor has the motion been disposed of by this honorable court.

(6) In the event that the matters mentioned above have been complied with in accordance with the rules of pro-

cedure requiring the orderly dispositions of cases before this Court, no deposition of Benedict F. FitzGerald should be taken until such time as this Honorable Court issues an order designating the areas of inquiry to be followed, and the areas of inquiry to be excluded. Rule 30 (b) Federal Rules of Civil Procedure. What matter the counsel for Defendant has in mind for inquiry should be set forth for the reason that Benedict F. FitzGerald, Jr. was counsel to Plaintiff in this case, and still is legal advisor of the Plaintiff so far as is known by the undersigned. Any information in the possession of Benedict F. FitzGerald pertaining to this case obtained from the client of the undersigned, or as a result of information obtained from Plaintiff, "work-Product", is subject to the attorney-client privilege, and such privilege will be asserted. Further, Counsel for Defendant has informed Benedict FitzGerald, Jr. that there is a possibility of a suit by Jay H. Thomas, Jr. against FitzGerald, as indicated by Ex. 87 attached hereto, and such matters certainly have no part of the proceedings here.

WHEREFORE, the plaintiff moves this court for an order forbidding the taking of the deposition of Benedict F. FitzGerald, Jr. and for such other orders as this occasion requires.

Respectfully submitted,

IRENE R. THOMAS

by her attys.

(sig.) PHILIP D. BROXLEY

DONOVAN AND TURNBULL

106 Little Falls St.

Falls Church, Virginia

Plaintiff's Exhibit 85 attached to Motion.

Plaintiff's Exhibit 85.

JOHN R. WILLETT
ATTORNEY AT LAW

—

KI 8-1618 - KI 9-9229

Suite 5A-B
Alexandria National Bank Building
1705 Fern Street
Alexandria, Virginia

February 28, 1956

Benedict F. FitzGerald, Jr., Esq.
National Press Building
Washington 4, D. C.

Re: Thomas v. Cassidy

Dear Mr. FitzGerald:

Please be advised that Miss Beverly Kline, 4109 Mt. Rainier Avenue, Mt. Rainier, Maryland, has referred your letter, together with all exhibits, to the undersigned. I have advised Mr. Thomas and will advise Mrs. Cassidy that I believe that you have gone out of your way, and beyond your authority as an attorney, in that you did make certain accusations pertaining to Mrs. Cassidy and to Mr. Thomas.

I am not confident what my clients intend to do, but I have been advised they will probably use this information for the basis of a personal lawsuit against you.

Very truly yours,

J. R. WILLETT
JOHN R. WILLETT
Attorney at Law

JRW lc

Plaintiff's Exhibit 86 attached to Motion.

Plaintiff's Exhibit 86.

JOHN R. WILLETT
ATTORNEY AT LAW

KI 8-1618 - KI 9-9229

Suite 5A-B
Alexandria National Bank Building
1705 Fern Street
Alexandria, Virginia

March 5, 1956

Benedict F. FitzGerald, Jr., Esq.
National Press Building
Washington, D. C.

Re: Thomas v. Cassidy
C A 1245

Dear Mr. FitzGerald:

Reference is made to your letter dated March 1, 1956.

It is requested that you please stop corresponding with the undersigned relative to any matters pertaining to Mr. Jay Harry Thomas, and any of his activities with his Court case that you indicate is pending in Maryland, or Mr. Thomas' personal acts. I am only concerned with the case in the U. S. District Court, Civil Action #1245 and how it pertains to Billie Smith Cassidy and Jay Harry Thomas, Jr.

You know what rights your client has and you should advise her as an attorney that if Mr. Thomas is guilty of the things that you allege, then you should take the necessary action to restrain him. I will not take any responsi-

bility for anything that Mr. Thomas does, outside of Civil Action 1245, U. S. District Court, Eastern District of Virginia. If he is doing all of these acts that you allege, he is doing so without my knowledge and consent. I have no interest in his activities. I have never issued any order as a judge on behalf of Mr. Thomas. I certainly would not represent Mr. Thomas in a civil matter and hear any of his cases as a judge. Any allegations that he has allegedly made are without the knowledge and consent of the undersigned. I have never issued an order as a judge on behalf of Mr. Thomas nor do I ever intend to do so. I trust that this will clarify the situation and my interest, and please feel free to take any steps available to you as you deem appropriate.

I have endeavored to telephone you on at least three occasions to explain my interest in this situation personally, so that there would be no misunderstanding but to date, have not been successful in getting you to return my call, and hence must resort to the medium of this letter.

Very truly yours,

JOHN R. WILLETT
JOHN R. WILLETT
Attorney at Law

JRW le
cc: Col. James F. McAuliffe
cc: Raymond L. Poston, Jr., Esq.

Plaintiff's Exhibits 74, 87 and 88 attached to Motion. Answer to Motion for Order that Deposition Not be Taken.

The other three letters attached to this motion are printed heretofore in this record as follows:

Letter

Exhibit 74—printed page 21a.

Exhibit 87—printed page 27a.

Exhibit 88—printed page 29a.

Answer to Motion for Order that Deposition not be Taken.

(Filed April 19, 1956.)

Comes Now, the defendant, Billie Smith Cassidy, by her counsel, and for her answer to the Motion for Order That Deposition Not be Taken, filed by the plaintiff on April 16, 1956, respectfully states that permission should be granted to take the deposition of Attorney Benedict F. FitzGerald, Jr., pursuant to the notice of examination mailed by counsel for the defendant on April 4, 1956, for the following reasons:

(1) That on March 16, 1956, counsel for the defendant notified counsel for plaintiff, that arrangements had been made for the defendant to return to Virginia in order that she would be available for the taking of depositions per his request at a pretrial on March 9, 1956. Information was furnished counsel for the plaintiff that Mrs. Cassidy would endeavor to return to Virginia sometime after April 15, 1956 and that immediately upon her arrival notification would be given in order that Mrs. Cassidy's depositions could be taken. Further information was furnished the counsel for the plaintiff that in the event that Mrs. Cassidy

could not physically return to Virginia that she would be available for the taking of depositions.

(2) Counsel for the plaintiff was notified, by letter, March 16, 1956 that Mr. Jay H. Thomas, Jr., agreed to have his depositions taken and that at anytime after Attorney FitzGerald had complied with Judge Bryan's request, that Mr. Thomas would submit to the taking of depositions. Counsel for the plaintiff may take Mr. Jay H. Thomas's depositions at anytime, after reasonable notice.

(3) The defendant and Mr. Thomas have not avoided the taking of their depositions and have manifested their intent and willingness for taking of depositions.

At the pretrial on March 9, 1956, counsel for defendant was considering filing a counterclaim and at that time the Honorable Judge of the above styled court indicated that depositions and interrogatories were available to obtain any and all information that the defendant needed. The taking of the deposition of Attorney Benedict F. FitzGerald is necessary in order to argue the motion filed by the defendant to the effect that the depositions taken in the matter of Colonel Robert F. Cassidy, Burks L. Hamner and J. A. Ponce should be stricken because local counsel was not present at the time of taking the depositions.

(4) The taking of the depositions of Benedict F. FitzGerald will not, in any way, effect any of the other motions set for argument on May 22, 1956. However, it will be necessary to take Mr. FitzGerald's depositions in order to argue the motion referred to in the proceeding paragraph.

Not any information to be taken at the deposition will, in any way, infringe in the relationship of counsel and client.

and the privileges normally connected thereto. The entire evidence taken pertains to the persons that were present at the time the depositions were taken for Colonel Robert F. Cassidy, Burks L. Hamner and L. A. Ponce. This information will be necessary for the court to pass on whether or not the defendant's motion to strike the depositions, should be granted. Not any of the information in this particular instance pertains to matters outside this action.

WHEREFORE, the defendant moves this court that the plaintiff's motion for order that deposition not be taken be denied and that the defendant be permitted to take the depositions of Benedict F. FitzGerald in accordance with the notice given, on April 26, 1956.

Respectfully submitted,

BILLIE SMITH CASSIDY,

By her attys.,
/s/ JOHN R. WILLETT.

Letter, Dated April 19, 1956, from John R. Willett to Judge Bryan.

(Filed April 20, 1956.)

JOHN R. WILLETT
Attorney at Law

KI 8-1618 - KI 9-9229

Suite 5A-B
Alexandria National Bank Building
1705 Fern Street
Alexandria, Virginia

April 19, 1956

Honorable Albert V. Bryan
Judge, U. S. District Court
Eastern District of Virginia
U. S. Post Office Building
South Washington Street
Alexandria, Virginia

Re: Irene R. Thomas vs.
Billie Smith Cassidy
Civil Action 1245

Dear Judge Bryan:

Please be advised that counsel for the defendant in the above styled action has filed motion for an order that depositions not be taken in the above styled action. The undersigned desires to take the deposition of Benedict F. Fitz-Gerald, Jr., in accordance with the notice furnished on April 26, 1956. It is necessary to request of you at this time that

a hearing be granted counsel in this case on the motion that was filed in order that I will know whether to proceed to take the depositions as scheduled for April 26, 1956.

The undersigned contacted counsel for the plaintiff, Philip N. Brophy, Esq., this date, who advised that he was free on April 23, 1956, if this date meets with the convenience of the court, however, that he had court cases set for April 24, 1956.

It is requested that you have your Clerk notify the undersigned as to whether or not you will grant us a hearing on this motion.

Thank you in advance for this consideration.

Very truly yours,

(sig.) JOHN R. WILLETT
Attorney at Law

JRW/ls
cc: Philip N. Brophy, Esq.

Stipulations.

(Filed May 8, 1956.)

ON THIS 23rd day of April 1956 came the plaintiff, Irene R. Thomas, by her counsel, and the defendant, Billie Smith Cassidy, by her counsel, and tendered a certain stipulation of fact, consisting of the following numbered paragraphs and moved that they be permitted to file the same, and that said stipulation be accepted as agreed statements of fact, and as evidence in this cause; which motion the court doth grant and doth order that said stipulation be signed as a part of the record herein:

Stipulations.

(1) That at the time of taking the depositions of Burks L. Hamner, and J. A. Ponce at the Cavalier Hotel, Virginia Beach, Virginia, January 19, 1956, taken on behalf of the plaintiff, there were no other persons present other than the Notary Public, Burks L. Hamner, J. A. Ponce, Benedict F. FitzGerald and Edward D. Harrigan.

(2) That as of January 19, 1956, Benedict F. FitzGerald and Edward D. Harrigan were not members of the bar of the State of Virginia.

(sig.) A. J. BRYAN,
Judge.

WE ASKED FOR THIS:
PHILIP N. BROPHY,
106 Little Falls Street,
Falls Church, Virginia,
Counsel for the Plaintiff,

JOHN R. WILLETT,
1705 Fern Street,
Alexandria, Virginia,
Counsel for the Defendant.

Letter, Dated July 6, 1956, from John R. Willett to Judge Bryan, Concerning Military Service.

Letter, Dated July 6, 1956, from John R. Willett to Judge Bryan, Concerning Military Service.

(Filed July 9, 1956.)

JOHN R. WILLETT
Attorney at Law

KI 8-1618 - KI 9-9229

Suite 5A-B
Alexandria National Bank Building
1705 Fern Street
Alexandria, Virginia

July 6, 1956

Honorable Albert V. Bryan
Judge, U. S. District Court
For the Eastern District of Virginia
Post Office Building
South Washington Street
Alexandria, Virginia

Re: Irene R. Thomas vs.
Billie Smith Cassidy
No. 1245

Dear Judge Bryan:

This will acknowledge receipt of the Notice of Conference For Trial Assignment, dated July 5, 1956, in the above styled case. Please be advised the undersigned has a criminal case scheduled in Berryville, Virginia on July 13, 1956, and it is requested that the undersigned be excused from appearing in your Court.

Letter, Dated July 6, 1956, from John R. Willett to Judge Bryan, Concerning Military Service.

The undersigned is a Reserve Officer in the United States Army and must attend two weeks active military duty at Fort Eustis, Virginia from July 15, through July 30, 1956. It will be appreciated if this case can be set down sometime after that date.

A copy of this letter will be sent to Philip N. Brophy, Esq., 106 Little Falls Street, Falls Church, Virginia.

Thank you in advance for this consideration.

Very truly yours,

(sig.) JOHN R. WILLETT
Attorney at Law

JRW/ls
cc: Philip N. Brophy, Esq.
106 Little Falls Street
Falls Church, Virginia

Letter, Dated October 15, 1956, from John R. Willett to Judge Bryan Requesting a Continuance.

Letter, Dated October 15, 1956, from John R. Willett to Judge Bryan Requesting a Continuance.

(Filed, October 16, 1956.)

JOHN R. WILLETT
Attorney at Law

—

KI 8-1618 - KI 9-9229

Suite 5A-B
Alexandria National Bank Building
1705 Fern Street
Alexandria, Virginia

October 15, 1956

Honorable Albert V. Bryan
Judge, U. S. District Court for
the Eastern District of Virginia
Post Office Building
South Washington Street
Alexandria, Virginia

Re: Thomas versus Cassidy

Dear Judge Bryan:

Please be advised that the undersigned is a Kiwanian and has been appointed co-chairman of the Credentials Committee for the Capital District Convention which is to be held in Roanoke on Thursday, Friday and Saturday, October 18 through 20, 1956.

In addition, the undersigned has been requested by the Governor to serve as Parliamentarian of the Capital District Convention.

Letter, Dated October 15, 1956, from John R. Willett to Judge Bryan Requesting a Continuance.

The undersigned contacted Philip N. Brophy, Esquire, Counsel for the Plaintiff, who incidentally is also a Brother Kiwanian, and indicated he had no objection to a continuance of the motion set for argument before you on Friday, October 19, 1956.

It will be appreciated if you will grant the undersigned a continuance in order that he can attend this convention. I want to advise you that this is solely for the personal benefit of the undersigned and there is no problem of ill health, etc.

Any consideration you may give this request will be greatly appreciated.

Very truly yours,

(sig.) JOHN R. WILLETT
Attorney at Law

JRW/ls
cc: Philip N. Brophy, Esq.
106 N. Little Falls Street
Falls Church, Virginia

Letter, Dated November 26, 1956, from Benedict F. FitzGerald, Jr. to Judge Bryan.

(Filed November 27, 1956.)

BENEDICT F. FITZGERALD, JR.
Counsellor at Law
National Press Building
Washington 4, D. C.

November 26, 1956

Hon. Albert V. Bryan
United States District Court Judge
U. S. D. C.—E. D. of Virginia
Post Office Building
Alexandria, Virginia

Re: *Thomas v. Cassidy*
Civil 1245

Dear Judge Bryan:

This office is acting as chief counsel for Mrs. Irene R. Thomas, Jr. in connection with litigation that has been instituted in four different areas.

On March 29, 1956 the undersigned propounded a letter to Earl C. Fletcher, Clerk of your court noting the withdrawal of his appearance as counsel for the plaintiff in the above case now pending in Virginia. This procedure was followed although no original appearance had been accepted or docketed by the clerk.

It is now the desire of the undersigned to reenter the above case and in association with an additional duly qualified member of the bar of your court to appear and to act for the plaintiff therein.

Letter, Dated November 27, 1956, from Judge Bryan to Benedict F. FitzGerald, Jr., Regarding Entry of Mr. FitzGerald.

Your instructions and assistance in accomplishing this desire would be appreciated.

Respectfully,

(sig.) BENEDICT F. FITZGERALD, JR.

BF/a

Letter, Dated November 27, 1956, from Judge Bryan to Benedict F. FitzGerald, Jr., Regarding Entry of Mr. FitzGerald.

(Filed)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF VIRGINIA
Alexandria, Virginia

Chambers of
Albert V. Bryan
District Judge

November the Twenty-seventh, 1956

Re: C/A 1245—Thomas v. Cassidy

Benedict F. FitzGerald, jr., Esquire,
Attorney at Law
National Press Building,
Washington 4, D. C.

Dear Sir:

Replying to yours of November 26th, your proper course is to have your local associate file a motion requesting that you be allowed to appear in the case as counsel with

him. It will then come up for consideration like any other motion.

Very truly yours,

ALBERT V. BRYAN

cc: Clerk, Alexandria, Virginia.

Motion to Permit Entry of Appearance.

(Filed January 4, 1957.)

Now comes the plaintiff in the above styled action and moves the court for permission to add Benedict F. FitzGerald, Jr., to the list of counsel appearing in her behalf and as grounds for the motion alleges as follows:

1. Benedict F. FitzGerald, Jr., an attorney is counsel of record for the plaintiff in several other actions in other jurisdictions which are patently intertwined with the present action.

2. Benedict F. FitzGerald, Jr. is a member of the bar of the Supreme Court of the United States of America and the District of Columbia and maintains an office at Suite 1152, National Press Bldg., Washington 4, D. C.

WHEREFORE the undersigned requests that an order issue permitting attorney Benedict F. FitzGerald, Jr. to appear and participate together with local counsel as attorney for the plaintiff, Irene R. Thomas, Jr.

Executed at Alexandria, Virginia this fourth day of January, 1957.

(sig.) HUGH R. TANKERSLEY, ESQ.,
Fairfax, Va.

Affidavit by Jay Harry Thomas, Jr. on the Contempt Issue.

(Filed January 7, 1957.)

COMES NOW, Jay Harry Thomas, Jr., and in response to the order of the Honorable Albert V. Bryan, made on January 4, 1957 to the effect that the undersigned should file an affidavit as to the reason why he should not be held in contempt of court for failure to appear for the taking of depositions following the service of a subpoena on him on or about December 28, 1955, respectfully answers as follows:

1. At the time the summons was served on the undersigned, the undersigned was a night student at the Columbus Law School, Washington, D. C.

2. An action for divorce had been filed against Jay Harry Thomas, Jr., by Irene R. Thomas in the Montgomery County Circuit Court.

3. There had been numerous attempts to get service of one type or another against the undersigned, together with many threats on the part of Irene R. Thomas and her counsel; and there had been considerable attempts to get the undersigned dismissed from the Columbus Law School, which was subsequently successfully accomplished. All of this activity on the part of counsel for Irene R. Thomas caused so much confusion to the undersigned that he did not understand why he should appear in the United States District Court for the Eastern District of Virginia since he was not a litigant to the action pending in the above styled court. (See Exhibit A attached hereto—a letter sent by Mr. E. J. Cutter to one of the professors of the Columbus Law School to show you the type of harassment being caused by Irene R. Thomas and her attorneys.)

4. The undersigned felt that the purpose of this subpoena was simply to obtain information to be used against his interest in the divorce proceeding pending in the Circuit Court in Montgomery County, Maryland. This information was available to Irene R. Thomas and her attorneys in the action pending in Maryland where the undersigned was a party litigant and appeared to be a duplication of activities in a separate court matter, in the above styled court. Attention is invited to the summons and the requirements that the undersigned take to Alexandria with him. Only a small portion pertained to Billie Smith Cassidy.

5. When the undersigned sought the services of an attorney and was advised the seriousness of failing to respond to a summons out of the above styled court, he immediately stated that he would be more than willing to submit to the taking of depositions at any time Irene R. Thomas and her counsel desired said depositions to be taken. As a manifestation of this good faith, the undersigned personally appeared in Benedict Fitzgerald's office when the depositions were taken on February 15, 1956. The court correspondence subsequent to February 15, 1956 will show that the undersigned has been ready, willing, and able to submit to the taking of his depositions and upon given reasonable notice will be more than pleased to the submitting of taking of depositions.

6. The undersigned felt that this taking of depositions in the above styled court was a further harassment on the part of Irene R. Thomas's attorneys and at no time did he intend to insult the dignity of the court and for any misunderstanding, respectfully apologizes in writing at this time, and had he believed that this was an attempt to

get information not available to Irene R. Thomas for the action in the above styled court, the undersigned would have responded, but he felt this was information that could be used against him in the Maryland court action that was currently pending.

7. The undersigned felt that he was not properly served when service was made him at Columbus Law School for the reason that he didn't feel the person who made the service was the proper party to make it; he refused to identify himself at the time of service and the undersigned felt that this was another act of harassment by attorneys for Irene R. Thomas.

It is respectfully requested that the motion to hold the undersigned in contempt be dismissed for the reasons manifested above.

Respectfully submitted,

JAY HARRY THOMAS, JR.

State of Virginia,
City of Alexandria, to-wit:

Before me, the undersigned Notary Public, in and for the State and City aforesaid, personally appeared Jay Harry Thomas, Jr., personally known to me, who after being duly sworn, deposes and says that the statements contained in the foregoing affidavit are true to the best of his knowledge and belief and that insofar as the contents are reported to be on information, he verily believes them to be true.

Exhibit A attached to Affidavit by Jay Harry Thomas, Jr.

GIVEN under my hand and seal this 5th day of January, 1957.

My Commission expires March 9, 1960.

J. R. WILLETT,
Notary Public.

I hereby certify that a copy of the foregoing Affidavit was this 6 day of January, 1957, sent by U. S. Mail, postage prepaid, to Hugh R. Tankersley, Esquire, 126 Poplar Street, Fairfax, Virginia, Counsel for Plaintiff.

JAY H. THOMAS, JR.

EXHIBIT A.

Washington, D. C.
December 5, 1955

Mr. Webster,
Professor of Taxation, Evening Division
Columbus University Law School
1323 - 18th Street, N. W.,
Washington, D. C.

Dear Sir:

Transmitted herewith is Form 21 issued by the United States Treasury Department relative to the delinquent account of your student, Jay Harry Thomas, Jr., 10805 Huntley Place, Silver Spring, Maryland.

The Treasury Department would like the total amount of $270.83 from Mr. Thomas as an additional payment

toward his 1953 income tax assessment which was found to be improperly filled out.

I am sure that your course at Columbus University includes instruction in prompt payment of delinquent accounts. If it does not, please impress upon Mr. Thomas the importance of meeting his obligations with the Federal Government if he is desirous of becoming an expert in the law, particularly in taxation.

Very truly yours,

/s/ E. J.
E. J. CUTTER

AH
Enclosure

Letter, Dated January 9, 1957, from Hugh R. Tankersley to Judge Bryan Concerning the Warrant, Its Dismissal, and Including Enclosures.

Letter, Dated January 9, 1957, from Hugh R. Tankersley to Judge Bryan Concerning the Warrant, its Dismissal, and Including Enclosures.

(Filed .)

LAW OFFICES
ROBERT C. LOWE
Herndon, Virginia

Hugh R. Tankersley
G. Galt Bready
Associates

Telephone Herndon 217

January 9, 1957

Hon. Albert V. Bryan
U. S. District Court for the
Eastern District of Virginia
Post Office Building
Alexandria, Virginia

In re: *Thomas* v. *Cassidy*
USDC ED VA Civil 1245

Dear Judge Bryan:

Pursuant to your direction transmitted herewith, please find a copy of the disposition of the criminal action instituted by Jay H. Thomas, Jr., then of 521 Ripley Street, Alexandria, Virginia, against Attorney Benedict F. FitzGerald, Jr.

You will please note that the disposition was *Not Guilty* and that the charges were dismissed with prejudice.

Letter, Dated January 9, 1957, from Hugh R. Tankersley to Judge Bryan Concerning the Warrant, Its Dismissal, and Including Enclosures.

Attached hereto you will also find a copy of a letter dated November 21, 1956 from Earl F. Wagner, Esquire, Commonwealth Attorney for the City of Alexandria, addressed to Attorney Benedict F. FitzGerald, Jr. This letter is the one Mr. FitzGerald described at the hearing held on January 4, 1957, and which he had inadvertently neglected to bring with him to court.

I shall look forward to a ruling on the motion previously filed to admit Attorney FitzGerald for the purposes of filing an appearance in behalf of the Plaintiff, Irene R. Thomas.

As previously noted Attorney FitzGerald is a member of the Bar for the Supreme Court of the United States of America as well as the District of Columbia. He presently maintains offices for the practice of law with William P. MacCracken, Jr. at the National Press Building, Washington, D. C. where he is active in the affairs of the American Bar Association and the District of Columbia Bar Association.

Respectfully,

(sig.) HUGH R. TANKERSLEY

HRT:jb

cc: Benedict F. FitzGerald, Jr.
John R. Willett, Esq.

Letter, Dated January 9, 1957, from Hugh R. Tankersley to Judge Bryan Concerning the Warrant, Its Dismissal, and Including Enclosures.

EARL F. WAGNER
Attorney and Counsellor at Law
127 North Fairfax Street
Alexandria, Virginia

Overlook 3-5599

Earl F. Wagner
Commonwealth's Attorney

A. John Séariot
Leslie Hall
Assistants

November 21st, 1956

Benedict F. Fitzgerald, Jr., Esq.
Attorney at Law
National Press Building
Washington 4, D. C.

Dear Mr. Fitzgerald:

This is to acknowledge receipt of your letter dated November 9th, 1956 and received by this office on 16th of November.

Please be advised that this office does not contemplate pursuing this matter any further. Mr. Thomas, the complainant who sued out the warrant against you has proven uncooperative. Therefore, the extradition papers were not transmitted to the Governor of Virginia.

Thanking you for your explicit letter, I am,

Very truly yours,

EARL F. WAGNER
EARL F. WAGNER

EFW:ds

Letter, Dated January 9, 1957, from Hugh R. Tankersley to Judge Bryan Concerning the Warrant, Its Dismissal, and Including Enclosures.

(SEAL)

CIVIL AND POLICE COURT
Alexandria, Virginia

Judge
James N. Colasanto

Judge
Neville G. Hall, Jr.

January 7, 1957

To Whom It May Concern:

The following is a true copy of docket # 2052 R:

Style of Case—
Commonwealth of Virginia vs. Benedict F. Fitzgerald, #2052 R

Address—
705 18th St. NW Washington, DC

Offense Charged—
1. Title 18-164 Grand Larceny
2. Title 46-9 Tampering with auto.

Personal History—
Male, white, 42, single, place of birth Mass., occupation Att.

Name of complainant—
J. H. Thomas, 521 Ripley St.

Time and Place of Occurrence—
11-22-55, Ripley St.

Time and Place of Arrest—
1-4-57 2:25 pm 126 N. Fairfax St.

Letter, Dated January 9, 1957, from Hugh R. Tankersley to Judge Bryan Concerning the Warrant, Its Dismissal, and Including Enclosures.

Warrant issued by William M. Glasgow JP

Witnesses for the Commonwealth—
J. H. Thomas, 521 Ripley St.
Mrs. B. F. Cassidy Same Address
Mrs. Alexander Same Address
Mrs. McCormich, Silver Springs, Md.

Arresting Officer—
Det. A. S. Benarick

Record of Bail Bond—
Summons, Auth. Mr. Wagner for appearance of defendant before C & P Court on 1-5-57 at 10 am

Disposition of Case—
Jan 7, 1957 1. NG Dismissed with prejudice
2. NG Dismissed with prejudice

Statement of fine—
Other fees (Specify) C.C. 371227 $2.50

Remarks—
Above dismissals rec. of Asst. Comm. Atty. Mr. Hall.

Presiding Judge—
James N. Colasanto, Judge of the Civil and Police Court.

I hereby certify that the above is a true and correct copy of the written information on do ket # 2052 R of Benedict F. Fitzgerald.

Yours truly,

FREDERICK F. JACKSON
FREDERICK F. JACKSON, *Deputy Clerk*

Letter, Dated February 1, 1957, from Benedict F. FitzGerald, Jr. to the Clerk in Richmond.

Letter, Dated February 1, 1957, from Benedict F. FitzGerald, Jr. to the Clerk in Richmond.

(Filed February 4, 1957.)

BENEDICT F. FITZGERALD, JR.
COUNSELLOR AT LAW
National Press Building
Washington 4, D. C.

February 1, 1957

Clerk
United States District Court
Richmond, Virginia

Dear Sir:

Please forward me fifteen subpoena's *ducus tecum*, signed and sealed but otherwise in blank, as provided for by the Rule 45 of the Federal Rules of Civil Procedure, for the production of documentary evidence.

Thank you for your past courtesies.

Very truly yours,

B. F. FITZGERALD, JR.

BF/a

RECEIVED
& iss.
dic
Feb - 4 1957
Clerk, U. S. Dist. Court
Richmond, Va

Notice to Take Depositions Pursuant to Rule 30 FRCP.

(Filed March 1, 1957.)

To: Mae Wooten,
Russell Stover Candy Store,
1343 F. Street, N. W.,
Washington, D. C.

To: Beverly Kline,
1343 F. St., N. W.,
Wash., D. C.

To: Jay H. Thomas, Jr.

PLEASE TAKE NOTICE, that at 2:00 P. M. on the 11th day of March, 1957, at the Russell Stover Candy Store, 1343 F. Street, N. W., Washington, D. C., the Defendant in the above styled action will take the depositions of Beverly Kline, Mae Wooten, Jay Harry Thomas, Jr., and Pauline E. Goebels, upon oral examination pursuant to the Federal Rules of Civil Procedure, before Donald F. Johnson, a Notary Public for the District of Columbia, who is not of counsel or attorney for either of the parties, nor a relative, or employee of such counsel, nor financially interested in this cause.

The oral examination will continue from day to day until completed. You are hereby notified to appear and take such part in said examination, as you may be advised and shall be fit and proper.

BILLIE SMITH CASSIDY,

By her Attorney:
J. R. Willett,
John R. Willett.

Dated at Alexandria,
Virginia this 1st
day of March, 1957

J. R. Willett,
John R. Willett,
Counsel for Defendant,
1705 Fern Street,
Alexandria, Virginia.

Order Quashing Notice of Depositions and Continuing Motion for Admission.

(Filed March 12, 1957.)

On March 11, 1957, pursuant to due notice to all parties, the court heard the motion of the plaintiff to vacate the notice given by the defendant to take the discovery depositions of Beverly Kline, Mae Wooten, Jay H. Thomas, Jr. and Pauline Goebels, and heard in part, also, the motion of the plaintiff's resident counsel to admit Benedict F. FitzGerald, Esquire, a non-resident attorney at law, to practice in this court in association with resident counsel for the trial of this case.

Upon consideration of the arguments of counsel on said motions, it is ORDERED:

1. That the said notice be vacated and that in lieu of the taking of the depositions as set forth in the said notice, the defendant shall take the depositions of the persons named in said notice before this court commencing at 10 o'clock on the morning of March 25, 1957, and the defendant is directed forthwith to cause subpoenas to be issued and served upon each of said persons requiring them to appear before this court at that time;

2. That the said motion for admission be continued to 10 o'clock A. M., March 25, 1957; and

3. That the trial of this action be continued from its presently assigned date of March 25, 1957, until such time as the court shall hereafter fix for the said trial.

Let copies of this order be mailed by the Clerk to Hugh R. Tankersley, Esquire, resident counsel for the plaintiff,

and to John R. Willett, Esquire, counsel for the defendant.

(Sgd.) ALBERT V. BRYAN,
United States District Judge.

A True Copy, Teste:
Walkley E. Johnson, Clerk.
By Frances E. Mumford,
Deputy Clerk.
(SEAL.)

Motion to Quash.

(Filed March 26, 1957.)

Comes now William Welch, William C. Higgins, and Robert Nagel by their attorney and respectfully submits that the said subpoena *duces tecum* be and the same should be quashed for the following reasons, to-wit:

A. That the said William Welch, William C. Higgins, and Robert Nagel are Special Agents of the Federal Bureau of Investigation of which bureau is an integral part of the Department of Justice.

B. That by Departmental Order 3329, signed by the Attorney General on January 13, 1953 and published in the Federal Register March 10, 1953, special agents of the Federal Bureau of Investigation are subordinates of the Attorney General and are prohibited from producing records or documents obtained during the course of their investigation and that such records and documents are considered confidential records.

(sig.) A. ANDREW GIANGRECO,
Assistant United States Attorney.

Letter, Dated March 29, 1957, from James J. Laughlin to Judge Bryan.

I, A. Andrew Giangreco, certify that on this day I personally hand delivered a copy of the said motion to Hugh R. Tankersley.

(sig.) A. ANDREW GIANGRECO,
Assistant United States Attorney.

POINTS AND AUTHORITIES

Touhy v. Ragen, 340 U. S., Page 462.

Letter, Dated March 29, 1957, from James J. Laughlin to Judge Bryan.

(Filed April 1, 1957.)

March 29, 1957

Honorable Albert V. Bryan
United States District Judge
United States District Court for
the Eastern District of Virginia
Post Office Building
Alexandria, Virginia

Dear Judge Bryan:

Since we returned from your court I have been in touch with Miss Pauline Goebel and she has been able to return to the office part-time. Her doctor has told her to be a little careful because she is just shaking off a bad case of virus. At the moment she is also under considerable strain due to the unfavorable publicity appearing in the newspapers flowing from her unwise investment.

Letter, Dated March 29, 1957, from James J. Laughlin to Judge Bryan.

After talking with her and with her supervisor, she tells me that she would be able to appear in court during the week of April 8 or the week of April 15. As you estimated the other day the remainder of the hearing will probably consume two days. The matter which came up during the trial as to Mr. Fitzgerald's procuring of subpoenas may prolong the hearing. After we left your court we made some study of the present Rules and the report of the Advisory Committee, and it appears to us that under Rule 45 of the Rules of Federal Civil Procedure and Rule 17(a) of the Rules of Federal Criminal Procedure it is mandatory upon the Clerk to issue subpoenas in blank. In this connection the Rule specifies that the Clerk "shall" issue subpoenas in blank.

I am having addressed a letter to Clerks in various District Courts inquiring as to their practice and I hope to have the benefits of the reply to these letters when we appear in your court. I am sure that you will agree if there is no authority to prevent the issuance of subpoenas in blank this allegation which appeared spontaneously would have to fall. I also desire to point out that this appeared in the case without warning to us. When we came to your court we did not come prepared to meet this allegation. Therefore, it is our view that we should have the widest possible latitude to meet it. Otherwise there would be a lack of due process insofar as Mr. Fitzgerald is concerned since his right to admission and his standing as a lawyer is at stake.

As we understand the issues that your Honor wanted clarified before you admitted Mr. Fitzgerald for the purpose of trying his sister's case they were (1) as to whether

Letter, Dated March 29, 1957, from James J. Laughlin to Judge Bryan.

he did or did not represent himself as an FBI agent and (2) to account for the delay in filing the deposition. These facts appear in the transcript of prior proceedings. Needless to say we admire the tenacity with which Mr. Fitzgerald has stuck by his sister and her child. We think that is indicative of his high character and we want to be fully prepared to meet the various issues that arise on his motion for admittance which have sprung from the animus existing between the parties and the hard feelings which have been engendered between Mr. Fitzgerald and Mr. Willett.

We think, therefore, that the evidence should be confined to these issues since those are the issues which your Honor has stated on a prior hearing that you wanted explained. You may recall that earlier Mr. Willett had impeded Mr. Fitzgerald's admission when his client obtained a warrant. That issue has now been removed and we are anxious to expedite the matter.

I am sending a copy of this letter to Mr. Willett and to Mr. Pratt.

Thanking you, I am

Sincerely yours,

(sig.) JAMES J. LAUGHLIN

JJL:lk

Letter, Dated April 9, 1957, From John R. Willett to Judge Bryan Enclosing a Copy of the Complaint Filed by Jay H. Thomas, Jr. vs. Benedict F. FitzGerald, Jr.

Letter, Dated April 9, 1957, From John R. Willett to Judge Bryan Enclosing a Copy of the Complaint Filed by Jay H. Thomas, Jr. vs. Benedict F. FitzGerald, Jr.

(Filed April 10, 1957.)

JOHN R. WILLETT
Attorney at Law

KI 8-1618—KI 9-9229

Alexandria National Bank Building
1705 Fern Street
Alexandria, Virginia

RECEIVED
APR 10 1957
Office of U. S. Dist. Judge
Alexandria, Va.

April 9, 1957

Honorable Albert V. Bryan
Judge, U. S. District Court for
the Eastern District of Virginia
U. S. Post Office Building
South Washington Street
Alexandria, Virginia

Dear Judge Bryan:

Inasmuch as a copy of the Civil Action pertaining to Benedict F. FitzGerald, Jr., versus John R. Willett, pending in the U. S. District Court for the District of Columbia was filed in the matter of Thomas versus Cassidy, Civil

Letter, Dated April 9, 1957, From John R. Willett to Judge Bryan Enclosing a Copy of the Complaint Filed by Jay H. Thomas, Jr. vs. Benedict F. FitzGerald, Jr.

Action No. 1245, in your Court, it occurred to the undersigned that no doubt you would like a copy of the civil action filed by J. Harry Thomas, Jr., against Benedict F. FitzGerald, Jr., Civil Action No. 1408-56 in the U. S. District Court for the District of Columbia.

This action was filed by Mr. Thomas April 4, 1956; however, this case was dismissed because Mr. Fitzgerald absented himself from the District of Columbia and the Marshal in the District could not personally serve Mr. FitzGerald. Consequently, the suit was removed from the docket by the clerk.

Very truly yours,

J. R. WILLETT
JOHN R. WILLETT
Attorney at Law

JRW/ls
Incl.
cc: Hugh R. Tankersley, Esquire
126 Poplar Street
Fairfax, Virginia

Letter, Dated April 9, 1957, From John R. Willett to Judge Bryan Enclosing a Copy of the Complaint Filed by Jay H. Thomas, Jr. vs. Benedict F. FitzGerald, Jr.

COMPLAINT FOR DAMAGES FOR LIBEL AND SLANDER

IN THE

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF COLUMBIA

———o———

JAY H. THOMAS, JR., 4710 Lee Highway Arlington, Virginia, *Plaintiff*,

vs.

BENEDICT F. FITZGERALD, JR., 705-18th Street, N. W. Washington, D. C., *Defendant*.

———

Civil Action No. 1408-'56.
Law

———o———

FILED
Apr 4-1956
Mary M. Hull, Clerk

JURY ACTION.

1. Jurisdiction is based on the fact that it is a civil suit involving over $3,000.00 exclusive of costs and interest.

2. Plaintiff is a good, true, just and honest citizen, and as such has always behaved and conducted himself, and until the committing of the grievances of the said Defendant as hereinafter mentioned, was always reputed, esteem-

Letter, Dated April 9, 1957, From John R. Willett to Judge Bryan Enclosing a Copy of the Complaint Filed by Jay H. Thomas, Jr. vs. Benedict F. FitzGerald, Jr.

ed and accepted by and amongst all his neighbors and business associates and other good and worthy citizens to whom he was known, to be a person of good name, fame and credit, whereby the said Plaintiff, before the committing of the several grievances by the said Defendant, as hereinafter mentioned, had deservedly obtained the good opinion and credit of all neighbors and business associates, and of other good and worthy citizens to whom he was known.

3. Yet, the said Defendant, well knowing the premises but contriving and maliciously intending to insult the said Plaintiff, and to injure him in his good name, fame and credit and to bring him into public infamy, scandal and disgrace, wrongfully, maliciously and injuriously published a certain false, scandalous, malicious and defamatory libel of and concerning the Plaintiff, to wit as follows:

a. That on or about February 21, 1956 the said Defendant caused to be transmitted through the United States Mail a communication and enclosures to a Miss Beverly Kline of Mount Rainer, Maryland, stating that the Plaintiff had engaged in criminal conversation and had lived in adultery, that he did not support his wife and his son and that he was sending expensive gifts to other women while his wife and child were going without his support; that the said Defendant did transmit through the United States Mail a post card addressed to the Plaintiff allegedly written to a person named Billie; that the Defendant transmitted through the United States Mail a letter dated February 21, 1956, addressed to Miss Beverly Kline, love letters allegedly written by a woman to the Plaintiff together with a photostatic copy of a register sheet from the Cava-

Letter, Dated April 9, 1957, From John R. Willett to Judge Bryan Enclosing a Copy of the Complaint Filed by Jay H. Thomas, Jr. vs. Benedict F. FitzGerald, Jr.

lier Hotel, No. 8828, inferring that the Plaintiff registered at the said Cavalier Hotel with a person other than his wife.

b. That the said Defendant on or about February 10, 1956, entered the Russell Stover Candy Company in Washington, D. C., and represented himself to be an F. B. I. Agent and demanded to know what purchase the Plaintiff made at the said store and defamed the Plaintiff in the presence of Mrs. Mae Wooton, Manager of the said Russell Stover Candy Company in Washington, D. C. and in the presence of Miss Beverly Kline, clerk of said candy company, by maliciously stating that Plaintiff was an adulterer, engaged in criminal conversation with other women, failed to support his wife and son, and uttered other derogatory, scandalous, malicious and insulting words against the Plaintiff, knowing such statements to be false.

c. That the said Defendant on divers other occasions, in the presence of Plaintiff's Mother and neighbors, uttered scandalous, malicious and insulting words concerning the Plaintiff, to wit, that the Plaintiff was a bum, that he slept with other women and that he did not support his wife and son.

d. That the said Defendant on or about January 31, 1956, also uttered scandalous, malicious and defamatory statements to various and sundry members of the faculty at Catholic University where the Plaintiff was a law student, to wit, that the Plaintiff was an adulterer, slept with other women, did not support his wife and son, and would be a disgrace to the Bar, and as a result of the embarrassment created by the said scandalous, malicious and defamatory

statements, uttered by the Defendant, the Plaintiff was obliged to leave the said law school.

e. That the said Defendant caused to be published to divers other individuals malicious, scandalous and defamatory statements that the Plaintiff is an adulterer, slept with other women, failed to support his family and was a man of bad moral character.

f. That in addition to the foregoing the said Defendant uttered scandalous, malicious and insulting words concerning the Plaintiff to Detective Jones of the Alexandria Police Department, Alexandria, Virginia, to wit, that the Plaintiff had slept with other women, that he was an adulterer, that he had neglected his wife and son and that he was lower than any bum.

4. By means of which premises, the said Plaintiff has been and is greatly injured and prejudiced in his credit and reputation aforesaid, and brought into public scandal, infamy and disgrace and is suspected to have been guilty of the misconduct so as aforesaid mentioned to have been charged upon and imputed to him, and by reason of the committing of the said grievances by the said Defendant as aforesaid, divers good and worthy neighbors and business associates wholly refused and still do refuse to have any transaction, acquisition or discourse with the said Plaintiff, as they were before used and accustomed to have and otherwise would have, and in addition, by reason of the said scandalous, malicious and defamatory statements uttered and published by the said Defendant against the said Plaintiff, the said Plaintiff was obliged to leave the School of Law where he had pursued a law degree, which will seri-

Letter, Dated April 9, 1957, From John R. Willett to Judge Bryan Enclosing a Copy of the Complaint Filed by Jay H. Thomas, Jr. vs. Benedict F. FitzGerald, Jr.

ously hamper and injure his future potential earnings and livelihood, and in addition he lost his job which he held at the time and was unable to secure another one.

WHEREFORE, Plaintiff demands judgment against the Defendant in the sum of $100,000.00, together with costs of this suit.

JAY H. THOMAS, JR.

John R. Willett,
Washington Office,
1001 Connecticut Avenue, N. W.,
Washington, D. C.

Virginia Office:
1705 Fern Street,
Alexandria, Virginia,
KI 8-1618.

Charles R. Rothouse,
1705 Fern Street,
Alexandria, Virginia,
KI 9-9229,

Counsel for Plaintiff.

Trial by Jury requested:

A true copy.
Test: 4-19-56.
Harry M. Hull, Clerk,
By Ann Walker,
(SEAL) Deputy Clerk.

Letter, Dated April 10, 1957, from Congressman Henderson Lanham to Judge Bryan.

Letter, Dated April 10, 1957, from Congressman Henderson Lanham to Judge Bryan.

(Filed April 11, 1957.)

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
Washington, D. C.

HENDERSON LANHAM
7th District, Georgia
Suite 109, Hesson Office Bldg.

Telephone:
NAtional 8-9129
Extensions 8-42 and 1988
Home Addresses:
Rome, Georgia

Committee:
Appropriations
Subcommittees:
Departments of Labor
Health, Education, and Welfare
and Related Agencies
Foreign And
Staff
Mrs. John D. Penn, Secretary
Mrs. Robert D. Milton
assistant
Bill Welch
Veterans Representative

RECEIVED
Apr 11 1957
Office of U. S. Dist. Judge
Alexandria, Va.

Letter, Dated April 10, 1957, from Congressman Henderson Lanham to Judge Bryan.

April 10, 1957

Hon. Albert V. Bryan, Judge
United States District Court
Eastern District of Virginia
Alexandria, Virginia

Dear Sir:

Mr. Benedict F. FitzGerald, Jr., Counsellor at Law, National Press Building, Washington 4, D. C. has asked me to write you concerning his admission to practice *Pro Hac Vice* in the case of Thomas v. Cassidy, USDC ED VA, Civil Action 1245.

I am sure you have a complete statement of his record as a practicing attorney, his educational background and experience. I am writing to tell you of my personal association with him while I was a member of the select committee of the House to investigate lobbying activities during the years 1949 and 1950. At that time Mr. FitzGerald was counsel for the committee and did a splendid job.

Furthermore he served as a member of the staff of Hon. John W. McCormack, Majority Leader of the U. S. House of Representatives during the year 1951.

I know of nothing that would be ground for refusal to admit him to practice in your district.

Respectfully submitted,

HENDERSON LANHAM.
HENDERSON LANHAM

HL:nm

Letter, Dated April 10, 1957, from William J. Hassan, Commonwealth's Attorney for Arlington County, Virginia, to Judge Bryan.

Letter, Dated April 10, 1957, from William J. Hassan, Commonwealth's Attorney for Arlington County, Virginia, to Judge Bryan.

(Filed April 11, 1957.)

OFFICE OF THE
ATTORNEY FOR THE COMMONWEALTH
Court House
Arlington 1, Virginia

WILLIAM J. HASSAN

K. McFarlane Smith
John J. Daly
Earl E. Shaffer
E. Eugene Luther
A. Albert Balavage

JAckson 7-4800
RECEIVED
Apr 11 1957
Office of U. S. Dist. Judge
Alexandria, Va.

April 10th, 1957

Hon. Albert V. Bryant
Judge
U. S. District Court, Eastern District of Virginia
Post Office Building
Alexandria, Virginia

Dear Judge Bryant:

I have received a request from an old acquaintance—Benedict F. FitzGerald, Jr.—to direct a letter of recommendation to you on his behalf.

Letter, Dated April 10, 1957, from William J. Hassan, Commonwealth's Attorney for Arlington County, Virginia, to Judge Bryan.

I have known Mr. FitzGerald for many, many years. I first met him during summer vacations in the Twenties at resorts in Massachusetts. We attended Boston University in the mid-Thirties and were closely acquainted, during which time I had occasion to visit his home, then in Cambridge, Mass. Off and on during the years we have had occasional contact, but our mutual friends have kept me advised of his progress and employment.

He was extremely well spoken of by a former law professor of mine by the name of Robert LaRue, during the time when he applied his legal abilities as Special Counsel to Senator Tobey of New Hampshire on the Interstate and Foreign Commerce Committee of the U. S. Senate. Subsequent to my resignation from the Office of Alien Property in the Department of Justice, Mr. FitzGerald became employed, and during that time mutual acquaintances discussed the fine repurtation that he had gained in the Office of Alien Property. On two or three occasions, the Hon. John W. McCormack, Majority Leader of the House of Representatives, who went to school with my father and in whose office Benedict FitzGerald performed services at the Capitol, has spoken very highly of him.

During the many years that I have known Mr. FitzGerald, he has had the highest reputation and regard among our mutual acquaintances, and I can recommend him highly as a man of good character and as a man of fine reputation for legal ability.

Sincerely yours,

WILLIAM J. HASSAN
WILLIAM J. HASSAN
Attorney for the Commonwealth

WJH:aj

Letter, Dated April 17, 1957, from Congressman John W. McCormack to Judge Bryan.

Letter, Dated April 17, 1957, from Congressman John W. McCormack to Judge Bryan.

(Filed April 19, 1957.)

JOHN W. McCORMACK
12th Dist., Massachusetts

EUGENE T. KINNALY
Administrative Assistant

Boston Office:
JAMES V. HARTREY
Secretary

CONGRESS OF THE UNITED STATES

HOUSE OF REPRESENTATIVES
OFFICE OF THE MAJORITY LEADER
Washington, D. C.

April 17, 1957

RECEIVED
Apr 19 1957
Office of U. S. Dist. Judge
Alexandria, Va.

Honorable Albert V. Bryan
Post Office Building
Alexandria, Virginia

Dear Judge Bryan:

At the request of Benedict FitzGerald, Jr. whose offices are in the National Press Building, Washington, D. C., I am taking the liberty of writing to you to convey to you the very high regard I have for Mr. FitzGerald. I have known

Letter, Dated April 17, 1957, from Congressman John W. McCormack to Judge Bryan.

Mr. FitzGerald for the past fifteen years. I respect him very much. I consider him to be honorable and trustworthy, both from a personal and a professional angle. I understand that a motion is pending before you for his admission to practice before your Court, and in connection with the same I am pleased to convey to you the high opinion that I have for him. I might also say that I have been a practicing attorney before the Massachusetts Courts since 1914, and while I have not engaged in the practice of my profession since shortly before my election to Congress, that prior thereto I was a very active practitioner in my profession. I have had plenty of opportunity to observe Mr. FitzGerald, both in Massachusetts and in Washington. He is one who represents his client with fidelity and courage, and that is what I like in any attorney who is handling a case for any client. But in representing his client with fidelity and with courage, he does so on a highly ethical plane, and with honor.

I am pleased, therefore, to convey to you the high regard that I have for Mr. FitzGerald.

With kind regards, I am

Sincerely yours,

JOHN W. McCORMACK
MAJORITY LEADER

Letter, Dated April 18, 1957, from Governor Foster Furcolo of Massachusetts to Judge Bryan.

Letter, Dated April 18, 1957, from Governor Foster Furcolo of Massachusetts to Judge Bryan.

(Filed April 20, 1957.)

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
State House, Boston

(SEAL)
FOSTER FURCOLO
Governor

April 18, 1957

RECEIVED
Apr 20 1957
Special Delivery at Home
Office of U. S. Dist. Judge
Alexandria, Va.

The Honorable Albert Bryan
United States District Court
Alexandria, Virginia

Dear Judge Bryan:

I am writing to you with regard to Mr. Benedict F. Fitzgerald, Jr., of Washington, D. C. who is seeking to be admitted specially as attorney in a civil action before your Court.

It is a pleasure for me to say a good word in behalf of Mr. Fitzgerald. I have known him in Massachusetts as a practicing attorney and also in Washington, D. C., where he served with Senate and House Committees. He is not only an outstanding attorney but is a credit to the Bar.

Memorandum by the Court.

His character and integrity are above reproach and it is a pleasure for me to recommend him for your consideration.

If you should like any further information in this regard, I should be most happy to furnish it if you will be good enough to contact me.

With all good wishes, I am

Sincerely yours,

FOSTER FURCOLO
FOSTER FURCOLO

Memorandum by the Court.

(Filed April 23, 1957.)

The immediate issue here arises in, but is only collateral to, the main case which is an action charging the defendant with the alienation of the affections of the plaintiff's husband, Jay Harry Thomas, Jr., and seeking damages. Original counsel signing the complaint for the plaintiff were Benedict F. FitzGerald, Jr., Esquire, a member of the bar of the District of Columbia but not admitted in Virginia, and his local associate, Oliver Lloyd Onion, Esquire, a practicing attorney in Virginia.

Rule 9 of this court provides that a practitioner from another State or the District of Columbia may be permitted to appear and conduct specific cases in association with a duly qualified member of the bar of this court. It requires the foreign attorney in all appearances in court to be accompanied by his resident associate. Mr. Fitz-

Gerald was, as of course and without formality, allowed to participate in this case under this rule. Later he withdrew as counsel and still later sought to reappear in the case. The propriety of his reentering the case was then questioned on the point initially raised by the court prior to Mr. FitzGerald's withdrawal--that there was evidence in the record that a criminal warrant was outstanding against Mr. FitzGerald in the State of Virginia and had not been answered by him. Subsequently other grounds of objection were raised by the court. Evidence and arguments on his motion for admission have been heard at length, Mr. FitzGerald being represented throughout by counsel. This memorandum deals solely with the motion.

A chronicle of the proceedings and events in the action and on the motion follows:

1. The action was filed in the Alexandria division of this court on November 1, 1955, summons and complaint were served on the defendant personally November 2, 1955 in the City of Alexandria, Virginia.

2. November 21, 1955, defendant filed an answer *pro se.*

3. November 21 and 23, 1955, notices for the taking of depositions of certain witnesses, including Jay Harry Thomas, Jr. and the defendant, were filed with the Clerk and signed by Mr. FitzGerald and Mr. Onion.

4. November 29, 1955, Mr. Onion was allowed to withdraw as counsel. Subpoenas in blank had been issued to Mr. FitzGerald by the Clerk of this court at Alexandria on request. No other local counsel was obtained until December 20, 1955.

5. December 7, 1955, notices to take the depositions of the defendant, Jay Harry Thomas, Jr., Robert F. Cassidy,

defendant's husband, and Frances E. Mumford, a deputy clerk of this court, on a subsequent date were filed and signed in the name of the plaintiff *pro se*. The notices bore the typewritten name of Mr. FitzGerald as attorney but were not signed by him; they also bore his printed name and address on the margin of the legal sheet. To the notices to Robert F. Cassidy and Frances E. Mumford were attached interrogatories and exhibits. All of these papers were obviously professionally drawn.

Because Frances E. Mumford was an officer of the court and the interrogatories addressed to her concerned her work as Deputy Clerk, the court of its own motion quashed the notice until it should be advised of the purpose and necessity of the deposition, the court opposing the drawing of its officers into a controversy pending before it unless their appearance was necessary. (The request for her deposition was subsequently withdrawn.)

6. December 8, 1955, by letter to the Deputy Clerk of this court at Alexandria, the undersigned judge noted that since Mr. Onion's withdrawal as resident counsel in this case, no substitution had been made for him, yet the foregoing notices and interrogatories, though filed in the name of the plaintiff *pro se*, had apparently been prepared and filed by Mr. FitzGerald without local counsel. The letter suggested that the Clerk call Mr. FitzGerald's attention to Rule 9, for "fear that Mr. FitzGerald may be acting under a misunderstanding" inasmuch as the use of such notices and interrogatories in a case pending in this court would constitute practicing in this court.

7. December 12, 1955, a letter from Mr. FitzGerald dated December 9, 1955, was received by the undersigned judge, stating that Mr. FitzGerald had received a copy

of the letter of the judge to the Clerk of December 8, 1955, that he had retained Virginia counsel in the place of Mr. Onion, and that he himself would comply with any steps necessary for him to qualify for participation in this case.

8. December 20, 1955, Raymond L. Poston, Jr., Esquire, a resident Virginia attorney, filed his appearance as local counsel for the plaintiff.

9. December 28, 1955, notice was sent to Mr. Poston and to the defendant that the action had been set at 10:40 A. M., January 6, 1956, for a pre-trial conference and fixing of date for trial.

10. December 29, 1955, a motion was filed by Mr. Poston and Mr. FitzGerald to postpone indefinitely the pre-trial conference set for January 6, 1956, on the ground that the plaintiff's attorneys were otherwise engaged in actions on January 6, 1956, that the case was not ready for pre-trial and for other reasons. The request was granted.

11. January 5, 1956, a written statement verified under oath by the defendant was received by the clerk.

This statement related that a criminal charge had been made in Virginia against Mr. FitzGerald for having broken a window in the locked car of the defendant and forcibly entering it to obtain evidence to use in a divorce action pending in Maryland between Irene R. Thomas and Jay Harry Thomas, Jr.

12. January 23, 1956, notice dated January 3, 1956, was filed by Mr. FitzGerald and Mr. Poston that on January 19, 1956, the plaintiff would take the depositions of named persons at the Cavalier Hotel, Virginia Beach, Virginia.

Memorandum by the Court.

13. February 1, 1956, John R. Willett, Esquire, a resident attorney of Virginia, filed his appearance in this action for the defendant and for Jay Harry Thomas, Jr., a copy being sent to Mr. FitzGerald and he having written Mr. FitzGerald on January 19, 1956 that he would "probably represent Mrs. Cassidy within the next few days".

14. February 13, 1956, there was filed a notice signed by Mr. Poston and Mr. FitzGerald of the intended taking of depositions on February 15, 1956, in the office of Mr. FitzGerald, Washington, D. C., of Beverly Kline and Mae Wooten, employees of the Russell Stover Company, before Pauline E. Goebel, a notary public.

15. February 17, 1956, Mr. Willett filed a memorandum stating that he had attended the depositions on February 15, 1956, as aforesaid, and had requested the reporter and notary public, Pauline E. Goebel, to furnish defendant's counsel with a true copy of the transcript of the depositions taken that day, a copy of the memorandum being sent to Mr. Poston.

16. February 20, 1956, depositions taken at the Cavalier Hotel on Jaunary 19, 1956, were opened, having been filed in the office of the clerk February 7, 1956.

The depositions showed that Mr. FitzGerald appeared for the plaintiff, with E. D. Harrigan, Esquire, also nonresident counsel for the plaintiff, but that no Virginia counsel was present.

17. March 6, 1956, Philip N. Brophy, Esquire, was substituted for Mr. Poston as resident counsel for the plaintiff.

Memorandum by the Court.

18. March 9, 1956, after due notice, a pre-trial conference was held, attended by Mr. Willett for defendant and by Mr. Brophy and Mr. Harrigan for the plaintiff, but Mr. FitzGerald did not appear.

The court explained the reason for staying the interrogatories directed to its Deputy Clerk but stated that she would at any time give either party any information she possessed.

At this time the court referred to the sworn statement of the defendant in regard to the outstanding criminal charge in Virginia against Mr. FitzGerald. The court then told counsel that prosecution of this case should be held in abeyance until disposition was made of the criminal charge, if any in fact existed. The court explained that it could not permit him to act as an attorney in this case in Virginia but remain out of the State with the criminal charge unanswered.

The court questioned the admissibility of the depositions taken at Virginia Beach because of the absence of local counsel in violation of Rule 9, called to the attention of Mr. FitzGerald by letter as aforesaid.

19. March 19, 1956, amended answer of the defendant filed, pursuant to leave granted at the pre-trial conference on March 9, 1956.

Motion was filed by defendant to strike the depositions of Robert F. Cassidy and the witnesses Hamner and Ponce taken at the Cavalier Hotel, Virginia Beach, Virginia, on the ground that no local counsel was present on either occasion.

20. March 30, 1956, Mr. FitzGerald filed notice of his withdrawal as counsel for the plaintiff in this case.

Memorandum by the Court.

21. April 4, 1956, defendant filed notice to take the deposition of Mr. FitzGerald on April 26.

22. April 19, 1956, Mr. Brophy filed a motion for an order forbidding the taking of the deposition of Mr. FitzGerald on the ground, among others, that Jay Harry Thomas, Jr. had never appeared for his deposition as noticed. Defendant's answer to foregoing motion was filed, including statement that plaintiff could take the deposition of Jay Harry Thomas, Jr., at any time.

23. May 11, 1956, pre-trial conference held and all pending motions set for May 22, 1956.

24. May 15, 1956, the undersigned judge notified counsel that he could not hear the motions on May 22nd, because he was to sit in the District Court in North Carolina the week of May 21, due to an emergency arising there.

25. July 6, 1956, case omitted from pre-trial call for July 13, and continued beyond July, because Mr. Willett had been temporarily called in the military service of the United States.

26. September 7, 1956, case called for pre-trial conference and all pending motions set for hearing on October 19, 1956.

27. October 19, 1956, case continued at the joint request of Mr. Brophy and Mr. Willett.

28. November 9, 1956, case called again for pre-trial and set for hearing on January 4, 1957.

29. November 27, 1956, the undersigned judge received a letter from Mr. FitzGerald dated November 26, 1956, stating that he desired to reenter this action as counsel in

association with a member of the local bar and asked instructions as to how to proceed. In reply Mr. FitzGerald was advised that the proper course was to have his local associate file a motion requesting that he be allowed to appear in the case as counsel, and that the motion would then come on for consideration as would any other motion.

30. January 4, 1957, Mr. Brophy requested, and was granted, leave to withdraw as counsel for the plaintiff.

Hugh R. Tankersley, Esquire, a resident member of the bar of Virginia, was admitted to practice in this court. He then moved the court for an order permitting Mr. FitzGerald to appear and participate with local counsel as attorney for the plaintiff. At this stage the question previously raised by the court, as to the criminal warrant, was raised again.

On the hearing of the motion for admission of Mr. FitzGerald, it appeared that a criminal warrant had been issued on November 25, 1955, on the complaint of Jay Harry Thomas, Jr. by the clerk of the Civil and Police Court of the City of Alexandria, Virginia, an official designated by law to issue criminal warrants (sec. 16-89, Va. Code of 1950, prior to 1956 amendment), charging that Mr. FitzGerald did on or about November 22, 1955, feloniously violate Title 18, section 164, Code of Virginia, by taking, stealing and carrying away a brief case and a negotiable note belonging to Jay Harry Thomas, Jr., and did unlawfully violate Title 46, section 9, Code of Virginia, in that, he did unlawfully tamper with an automobile of one Mrs. B. F. Cassidy. It further appeared that Mr. FitzGerald had not voluntarily answered the warrant, that he was arrested in Maryland in September, 1956 on a Mary-

land warrant based upon the warrant issued in the State of Virginia. Mr. FitzGerald stated that he had not answered because Mr. Willett was the substitute judge of the Civil and Police Court in Alexandria, not a court of record, before which the case would come. Mr. Harrigan stated that he had advised Mr. FitzGerald not to be hurried to answer it.

The court declined to pass upon the motion for admission until it was given assurance that the prosecution had been terminated. The motion was continued to permit such proof to be obtained.

The motions heretofore filed by the defendant, to strike the depositions of Robert F. Cassidy and of the two witnesses taken at Virginia Beach, Virginia, as aforesaid, were denied. The court expressed the opinion that its local Rule 9 required the attendance of Virginia counsel in association with non-resident counsel at the taking of depositions in Virginia in any case pending in this court, the court being of the opinion that the appearance at a deposition in this State to be used in this court was equivalent to an appearance in this court. However, the court stated it would accept Mr. FitzGerald's explanation that he did not consider the rule applicable to depositions.

The court denied the defendant the right to take Mr. FitzGerald's deposition at this time on the ground that counsel in a case should not, save in extreme circumstances, be subjected to examination as a witness; it denied a motion theretofore filed for default judgment in favor of the plaintiff; and it directed that Jay Harry Thomas, Jr., file an answer stating why he should not be held in contempt for failing to appear at the deposition noticed by the plaintiff for December 28, 1955.

Memorandum by the Court.

The case was set for trial on March 25, 1957.

Mr. Willett, counsel for the defendant, called the attention of the court to the fact that the depositions of Beverly Kline and Mae Wooten taken February 15, 1956 by the plaintiff, had not been filed in this court. Plaintiff's attorneys, in the presence of Mr. FitzGerald, were directed to have the depositions filed at once, Mr. Willett stating his readiness to pay any cost.

31. January 7, 1957, Jay Harry Thomas, Jr. filed a sworn answer to purge himself of possible contempt for failing to appear at the deposition.

32. January 11, 1957, the undersigned judge received from Mr. Tankersley a letter dated January 9, 1957, advising that he was ready to submit papers showing that the criminal prosecution against Mr. FitzGerald by the State of Virginia had been terminated.

33. February 1, 1957, the undersigned judge wrote Mr. Tankersley that he would be glad to discuss the FitzGerald matter with him the next time he came to Alexandria.

34. February 27 or 28, 1957, Mr. Tankersley alone came to the chambers of the undersigned judge and submitted papers showing termination of the FitzGerald prosecution. Due to absence of the judge while holding court in Richmond and Norfolk on several days during February, and the inability for other reasons of Mr. Tankersley and the judge to meet before this date, the conference was not held sooner. Inasmuch as the prosecution had terminated favorably to Mr. FitzGerald, the judge told Mr. Tankersley that he was of opinion to admit Mr. FitzGerald but that he wished the motion to be made formally in court and fixed Wednesday, March 6, as the day for the motion.

Memorandum by the Court.

Mr. Tankersley, in answer to an inquiry from the judge, stated that the depositions of witnesses Kline and Wooten had been filed.

35. March 1, 1957, Mr. Willett filed a request for permission to take the deposition of Beverly Kline, Mae Wooten, Jay Harry Thomas, Jr. and Pauline Goebel. Notices for such depositions were filed showing they would be taken March 11, 1957, in Washington, D. C.

36. March 4, 1957, Mr. Tankersley filed a motion, returnable to March 11, 1957, to vacate Mr. Willett's notice to take the depositions of Beverly Kline, Mae Wooten, Jay Harry Thomas, Jr. and Pauline Goebel on March 11, 1957, in Washington, D. C. and to quash the subpoenas commanding their appearance for such depositions. The subpoenas had been issued out of the United States District Court for the District of Columbia under Rule 45(d) F. R. C. P.

37. March 5, 1957, Mr. Willett applied to this court to set a hearing, prior to March 11, of Mr. Tankersley's motion aforesaid to quash the notices and subpoenas for the March 11 depositions. The judge set March 7 for the hearing and immediately wrote Mr. Tankersley, had him called by telephone, and also directed Mr. Willett to notify him of the hearing, Mr. Willett then having an engagement to see Mr. Tankersley later that day. In these communications, the judge advised Mr. Tankersley that he would not hear the motion for admission on March 6 but would hear it on March 7, along with the motions respecting the depositions. He said further that he thought it would be well to have present on March 7th, Pauline Goebel, the reporter who took the depositions on February 15, 1956.

Memorandum by the Court.

38. March 6, 1957, Mr. Tankersley appeared with Mr. FitzGerald and stated in court that he could not conveniently be present on March 7th, and asked postponement of the hearing date on his motion to quash the deposition notice and subpoenas. He again moved the admission of Mr. FitzGerald, but the court declined to pass upon the admission motion until it had heard the motions respecting the depositions.

With the agreement of Mr. Tankersley, the judge consented to meet Mr. Willett alone on March 7 in order to set a hearing date for the deposition motions, having first ascertained the dates acceptable to Mr. Tankersley.

The reason the court declined to act on the motion for admission was that on examination of the Kline and Wooten depositions taken February 15, 1956, but not filed until February 26, 1957, there appeared an implication that Mr. FitzGerald had stated to the witnesses, at the time of the incident of which he wished them to depose on February 15, 1956, that he was with the F. B. I. and later that he was a police inspector. The incident was this: on February 9, 1956 Jay Harry Thomas, Jr. ordered a Valentine box of candy in the Russell Stover Candy Company, Washington, D. C. to be sent to the defendant; Mr. FitzGerald followed Thomas into the store after he left; he requested Beverly Kline, the saleslady, to show him Thomas' order slip, Mae Wooten, the store manager, being also present; and Beverly Kline did show it to him.

39. March 7, 1957, the judge met Mr. Willett in chambers, pursuant to the agreement with Mr. Tankersley on the preceding day, and arranged that, subject to the motion to quash, the scheduled date for the proposed deposi-

tions be deferred until March 15, and that the motions to quash be heard on March 11, both dates being those agreeable to Mr. Tankersley. The judge wrote Mr. Tankersley and Mr. Willett a letter confirming these dates.

40. March 8, 1957, a letter was written by James J. Laughlin, Esquire, an attorney in the City of Washington, D. C., to the Clerk of this court enclosing a copy of an order entered by the United States District Court of the District of Columbia, quashing the subpoena issued by that court directing Pauline Goebel to appear for the deposition in Washington on March 11, 1957, the order being dated March 8, 1957 and entered upon the motion of Mr. Laughlin as attorney for Pauline Goebel, after notice to Mr. Willett on March 7, 1957 by telephone about 6 o'clock P. M.

41. March 11, 1957, this court heard the motion of the plaintiff to vacate the notices theretofore given by the defendant for the taking of the deposition of Beverly Kline, Mae Wooten, Jay Harry Thomas, Jr. and Pauline Goebel and heard in part the motion for admission of Mr. FitzGerald. Mr. Willett stated that the purpose of the depositions was to show that the transcript of the February 15, 1956 was incorrect throughout. The court declined to pass upon the motion until it could hear the testimony of Pauline Goebel in regard to the content and filing of the depositions. The court further stated that it wanted to know why the deposition had not been filed for more than a year after it was taken.

It was announced in court that Mr. FitzGerald had that day filed an action in the United States District Court for the District of Columbia against Mr. Willett for

$700,000.00 damages alleging, *inter alia*, that Mr. Willett had endeavored to prevent Mr. FitzGerald from appearing as counsel in the present litigation in this court by having the aforesaid criminal warrant issued in Virginia and by later causing it to be served; that Mr. Willett had caused the Clerk to refuse to issue to Mr. FitzGerald and his counsel subpoenas in blank; and that Mr. Willett had advised this court that Mr. FitzGerald had represented himself as an F. B. I. agent, to prevent his admission.

Mr. Fitzgerald was twice asked by the court if he desired to testify on his motion for admission, but he declined each time. On the last occasion he stated that the court was forcing him to testify. He was not required to take the stand.

42. March 12, 1957, this court entered an order vacating the notices for the taking of the depositions of Beverly Kline *et al.*, scheduled for March 15, 1957, and directed that said depositions be taken before this court on March 25, 1957, that the witnesses be subpoened to appear at 10 o'clock A. M. on that day, and that the motion for admission be also further heard on March 25. At the same time it continued generally the trial of the case.

43. March 22, 1957, Mr. FitzGerald amended his complaint in the United States District Court for the District of Columbia, in his action against John R. Willett, so as to add as party defendants Beverly M. Kline and Russell Stover Candy Company, the employer of Beverly Kline and Mae Wooten at the time of the depositions of February 15, 1956. The amendment charges Beverly M. Kline with conspiring with Mr. Willett to slander the plaintiff and charges Russell Stover Candy Company with negligence in employing Beverly M. Kline.

Memorandum by the Court.

The attorneys for Mr. FitzGerald in the District of Columbia action were Mr. Laughlin and his associate Albert J. Ahern, Esquire, also a practitioner in the District of Columbia.

44. March 25, 1957, on motion of Mr. Tankersley, the court admitted as associate counsel for the plaintiff Messrs. Laughlin and Ahern. The court declined to grant at that time Mr. Tankersley's motion for the admission of Mr. FitzGerald as associate counsel generally or for the purpose of examining the several prospective deponents.

The court explained that the hearing this day would consist of the taking of the depositions pursuant to the notice given by Mr. Willett and would consider the deponents' testimony insofar as it bore upon the motion for admission.

The witness Pauline Goebel did not appear, Mr. Laughlin explaining that the marshal had been unable to serve the subpoena upon her and that she had been ill. He undertook to notify the court when she would be available.

Throughout March 25 and 26 the court heard the testimony of Beverly Kline, Mae Wooten and Jay Harry Thomas, Jr. It heard too, the testimony of Bernard C. Pendleton, offered by Mr. FitzGerald on his motion for admission.

Miss Kline had refused to sign the deposition and she pointed to numerous errors in the transcript. At the depositions, she said, Mr. Willett objected to the presence of a sound recorder then in operation and to Mr. FitzGerald's secretary acting as reporter, and thereupon Mr. FitzGerald called Miss Goebel to take the depositions. She testified that in fact, and that she had deposed that, Mr. FitzGerald had told her he was "with the F. B. I." Accordingly, she said, she showed him the order slip and the next day called

the F. B. I. to ascertain if there was an F. B. I. agent by that name.

Miss Wooten, who had also refused to sign the depositions testified that in fact, and that she had deposed that, someone called her saying he was a police inspector, just after the candy store incident, and that she recognized the voice as FitzGerald's.

Both of the witnesses said the certification on the transcript was not correct and that their refusal to sign it was solely because the transcript was incorrect.

Just before the depositions were taken, they both said, that, at the instance of their employer's attorney, they had met and talked with Mr. Willett at the Willard Hotel and that they had so deposed.

45. March 26, 1957, on completion of the depositions and of all other available testimony, the hearing on the motion for admission was continued to await a time when Pauline Goebel would be made available for examination, and the witnesses for Mr. FitzGerald tendered on his motion for admission.

During the course of the hearing it appeared that certain persons had been summoned to be present this day for the plaintiff, through subpoenas issued out of the Richmond office of the Clerk of this court. As the Deputy Clerk at the Alexandria office had informed Mr. Tankersley and Mr. FitzGerald on or about March 7th that he had been directed, by the judge, not to issue subpoenas in blank to anyone in any case without consultation with the undersigned or one of the other judges of this court, the court inquired to know the source of these subpoenas.

It then appeared that they had been obtained by Mr. FitzGerald, as an attorney at law, by writing from his office in

Washington, D. C. directly to the Clerk's Richmond office on February 1, 1957, and not to the office in Alexandria, for blank subpoenas, without disclosing in what case they would be used, or that his right to practice in this court had been questioned and that he had thus far been refused readmission to practice in this court in this case.

46. April 1, 1957, Mr. Laughlin advised the court by letter that Pauline Goebel would be available as a witness at any day during the week of April 8th or 15th. In reply the court set the time for her appearance as April 8, 1957, notifying all other counsel at the same time.

47. April 8, 1957, Pauline Goebel appeared accompanied by other counsel, who merely sat in the courtroom as an observer. She was sworn and testified as follows:

That she had acted as the notary public on February 15, 1956, for the taking of the depositions of Beverly Kline and Mae Wooten, at the instance of Mr. FitzGerald, in his office in Washington, D. C.; that she had never before taken depositions; that she was not a public stenographer; that there was considerable confusion in the room; that she noticed a sound recording machine in operation; that a short time after February 15, 1956, she delivered to Mr. FitzGerald in his office her notes and such transcript as she was able to make; and that she made no reply to Mr. Willett's request for a copy of the depositions simply through neglect, there never being any question of her payment for the transcript.

She further testified that the transcript that had been sent to the court had not been prepared by her; that she had signed the certificates attached to it; that Mr. FitzGerald had prepared the transcript and the certificates; that she had read the transcript and it seemed to her to be accurate;

and that she saw the transcript, now filed with the court, for the first time when it was presented to her by Mr. FitzGerald in January or February, 1957.

She further testified that she had not retained Mr. Laughlin to appear before the United States District Court in the District of Columbia on March 8, 1957, to quash the subpoena summoning her to appear for a deposition on March 11th.

Mr. Laughlin then requested to be sworn as a witness. He testified that on March 7, 1957, the subpoena for the appearance of Miss Goebel had been put on his desk, with the message that she was ill, and that he assumed that he was authorized to appear for her to have the subpoena quashed, assuming it had been left by someone known to him in his office building.

Milton Weinberg was then called as a witness on behalf of Mr. FitzGerald. He stated that he was employed at times in Mr. FitzGerald's office; that he was a typist as well as a lawyer; that in August, 1956, at the request of Mr. FitzGerald he made a rough draft of the depositions of Beverly Kline and Mae Wooten, taken February 15, 1956, from the disc of the sound machine; that he had written the transcript of their depositions, now on file with the court, in their final form in January, 1957; that he did not know now where was the disc; and that he never saw the stenographic notes taken by Miss Goebel. For the transcript he received $54.00, the same amount Mr. Willett had sent Miss Goebel for the transcript in January, 1957.

Mr. FitzGerald then took the stand in his own behalf and testified as follows:

That just before the depositions were taken on February 15, 1956, in his office, Mr. Willett had called him to go out-

side of the room, and had said on that occasion that he was a substitute judge of the Civil and Police Court of the City of Alexandria, Virginia and that he intended to use his power in that position to prosecute Mr. FitzGerald unless Mr. FitzGerald should terminate all of the litigation instituted on behalf of Irene R. Thomas, plaintiff in the present action; that he never lodged a complaint with any court against Mr. Willett for the alleged conduct, because it was not his way of handling such things; that he inquired by telephone of the clerk of the Civil and Police Court about the outstanding warrant in Virginia, but was told there was no such warrant; that he does not know when the inquiry was made, that he did not on any occasion represent himself as an F. B. I. agent, or as being "with the F. B. I."; that he had been talking to F. B. I. agents in regard to the conduct of Jay Harry Thomas; and that any reference to the F. B. I. made to Miss Kline related to these interviews only.

FINDINGS AND CONCLUSIONS.

A. Regardless of the merits of the charge contained in the criminal warrant issued in Virginia, it was the professional duty of Mr. FitzGerald to bring its existence to the attention of this court. He must have learned of it the early part of January, 1956, at the latest; yet he never made any explanation of it to this court and, indeed, never appeared in this court thereafter, until January, 1957, when he sought readmission. Knowledge of the warrant came to the court through the defendant's written, verified statement, when no counsel had appeared for her.

Moreover, it was Mr. FitzGerald's ethical duty to answer the warrant without delay.

His failure to answer the warrant can hardly be excused by the circumstance that Mr. Willett was a Substitute Judge

of the Civil and Police Court of the City of Alexandria. There are two regular judges of that court and as many substitutes. Under the Virginia statute, the latter sit only in the absence of their principal-judges. Moreover, of course he could not act in a case with which he had been connected.

There is no evidence whatsoever here that Mr. Willett had anything to do with the issuance of the warrant. It was sworn out in November 1955 and he did not come into this case to represent Thomas or Mrs. Cassidy until February 1956. In fact, the record in this case nowhere shows that Mr. Willett has ever made any charge, in this action or elsewhere, of a criminal nature against Mr. FitzGerald.

B. The court believes that Mr. FitzGerald was ethically bound not to attempt, from November 29, 1955, to December 20, 1955, to conduct proceedings in this court as if they were being conducted by the plaintiff *pro se*. There can be no doubt that he was at the time cognizant of the rules of court generally, and of this court particularly, that foreign attorneys are required to have associate local counsel.

C. The depositions of February 15, 1956 were sponsored by Mr. FitzGerald and upon their completion he had control of the record of them—he had the stenographer's notes, her draft of the transcription, and the alleged recording, and the reporter was a business acquaintance with her office in the same building as his. Yet, despite opposing counsel's immediate call for the transcript, Mr. FitzGerald failed to produce the transcript or make any explanation of his failure. What has been filed as a transcript came a year afterwards and then only upon direction of the court. The only inference deducible is that the depositions were un-

favorable to Mr. FitzGerald or his client. But above all his conduct was a flagrant obstruction to the administration of justice in this court.

Had Mr. Willett not insisted, over Mr. FitzGerald's protest, upon the retaking of the Kline and Wooten depositions, and upon calling Pauline Goebel to depose also, the court would doubtlessly have never been apprised of the unreliableness of the filed transcript or of the appalling process of its production.

D. The court is convinced that the transcript now offered of the February 15, 1956 depositions is inaccurate throughout in its material parts. The testimony of Miss Kline and Miss Wooten before the court clearly shows its incorrectness. The court cannot escape the conclusion that in the candy store on February 9, 1956, Mr. FitzGerald stated to Miss Kline, as she repeatedly testified in court, that he was "with the F. B. I." She was made to understand that he had a connection with the F. B. I. justifying his questioning her on that occasion. He may well have not gone so far as to pose as an F. B. I. agent, in a criminal sense, but he undoubtedly intentionally created the impression upon her that he had authority to make his inquiries.

Although Mr. FitzGerald had taken Miss Kline's deposition as a witness for the plaintiff, at the deposition in court he caused his counsel to attack her character, after she had pointed to the inaccuracies in the transcript and testified to what had occurred at the store. The court thinks that she was truthful and courageous in her testimony and it believes her.

E. As heretofore mentioned, the very day on which Mr. Willett was to appear in this court to argue that he be allowed to retake the depositions of Beverly Kline and Mae

Wooten, and to take the deposition of Pauline Goebel, in respect to the February 15, 1956 depositions, Mr. FitzGerald filed a damage suit against Mr. Willett involving the very matters then pending before this court on his motion for admissions. The action was not filed at Mr. Willett's residence, but in the District of Columbia. The timing of this action reveals it as an obvious attempt to intimidate Mr. Willett in presenting the matter of the depositions to this court.

Likewise his amendment, on March 22, 1957, of the damage action so as to include Beverly M. Kline and the employer of herself and Mae Wooten, Russell Stover Candy Company, was clearly an attempt to intimidate Miss Kline at least. She was then under summons to appear in this court to testify three days later, March 25, 1957, in regard to the depositions of February 15, 1956. Mr. FitzGerald's counsel in the damage action had not then appeared in this court in the present litigation, they were not obligated to this court, and they are not subject to criticism for filing the damage action.

F. When this action was first filed, Mr. FitzGerald and his local associate were issued subpoenas in blank, as permitted by Rule 45(a) F. R. C. P. Some months after judge of this court determined it advisable to safeguard the practice permitted by the rule. Accordingly, he instructed the Deputy Clerk of this court at Alexandria not to issue subpoenas in blank except upon the approval of the judge, directing him to refer the applicant to the judge on any such request. This was the regulation of which Mr. FitzGerald and the local counsel then representing the plaintiffs in this action, were informed when they applied to

the Clerk at Alexandria for subpoenas in blank on or about March 7th, 1957.

But the conduct of Mr. FitzGerald, anent the subpoenas procured by him from Richmond, is not condemned as a violation of the regulation, as his counsel postulate in argument. The misconduct consists of his avoiding the Alexandria office, where his request would be declined because he had been refused admission, and of applying to an office not familiar with the case or his status, without fully disclosing his position. His conduct was not proper for the further reason that it constituted practicing in a court where he was not allowed to practice.

JUDGMENT TO BE ENTERED.

Viewed in the light most favorable to Mr. FitzGerald, the events just narrated plainly prove that his behavior in this case has been most unbecoming. The court realizes that he has been impelled to unusual zeal by his relationship of brother to the plaintiff. However, it cannot contemplate the recounted series of acts on his part without concluding that his behavior envinced a complete and intentional disregard of the obligations of an attorney to the court.

Approach to decision on Mr. FitzGerald's motion has been made on the basis that Mr. FitzGerald should be presumed entitled to admission until the contrary should clearly appear from the evidence. Perhaps the burden was upon him, but he has not been required to assume that task. Note *In Re* Isserman, 1953, 345 U. S. 286. This court has consistently admitted, *pro hac vice*, attorneys, from other jurisdictions, especially from the District of Columbia, without question and this privilege was in the same manner accorded Mr. FitzGerald initially.

Order Denying Admission of Benedict F. FitzGerald, Esquire as Counsel Pro Hac Vice.

Adopting this memorandum as its findings of fact and conclusions of law on the motion for admission, the court will enter an order denying the motion.

(SGD.) ALBERT V. BRYAN,
United States District Judge.

Order Denying Admission of Benedict F. FitzGerald, Esquire as Counsel Pro Hac Vice.

(Filed April 23, 1957.)

Upon consideration of the motion for the admission of Benedict F. FitzGerald, Esquire to practice in this court as counsel in this case in association with local counsel, it is, upon the findings of fact and conclusions of law stated in the memorandum of the court this day filed,

ORDERED that said motion be denied, that the said Benedict F. FitzGerald shall not take part in the trial of this case or in the taking of depositions, and shall not otherwise participate in any manner as counsel in this action; and it is further

ORDERED, in view of the foregoing ruling, that the deposition of Jay Harry Thomas, Jr., now set for April 27, 1957, not be taken at that time, but the plaintiff be given leave to apply for an order directing the appearance of the said Jay Harry Thomas, Jr. at a later time after substituted counsel have had an opportunity to become familiar with the case.

(sgd.) ALBERT V. BRYAN,
United States District Judge.

Letter, Dated April 23, 1957, from Judge Bryan to Earl C. Fletcher, Deputy Clerk.

Letter, Dated April 23, 1957, from Judge Bryan to Earl C. Fletcher, Deputy Clerk.

(Filed .)

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Alexandria, Virgina

Chambers of
ALBERT V. BRYAN
District Judge

April the Twenty-third, 1957

Re: C/A 1245—Thomas v. Cassidy
Earl C. Fletcher, Esquire,
Deputy Clerk,
United States District Court,
Alexandria, Virginia.

Dear Mr. Fletcher:

In the above entitled case, Judge Bryan has today signed the enclosed Memorandum by the Court and Order Denying Admission of Benedict F. FitzGerald, Esquire as Counsel *Pro Hac Vice.*

I am sending a copy of this letter to counsel, and also a copy of the Memorandum and Order.

Very truly yours,

.....
Secretary to Judge Bryan

cc: Hugh R. Tankersley, Esquire,
Attorney at law,
126 Poplar Street,
Fairfax, Virginia.

James J. Laughlin, Esquire,
Attorney at Law,
National Press Building,
Washington, D. C.

John R. Willett, Esquire,
Attorney at Law,
1705 Fern Street,
Alexandria, Virginia.

Motion to Vacate Findings of Fact, Findings and Conclusions and Judgment Entered by this Court.

(Filed May 3, 1957.)

Now comes Benedict F. FitzGerald, Jr., by and through his attorneys, and pursuant to the Federal Rules of Civil Procedure moves this Court to vacate the findings of fact, findings and conclusions and judgment entered in this cause, and we pray for relief as set forth in this motion as follows:

1. The Court should vacate all findings of fact and conclusions of law entered because under Rule 52(a) of the Federal Rules of Civil Procedure findings of fact and conclusions of law are unnecessary on the decisions of motions. Thus, the motion to admit Mr. FitzGerald to practice did not require the Court to make findings of fact and conclu-

sions of law and it appears from these findings that they serve merely to criticize Mr. FitzGerald and exonerate and praise Mr. Willett for his conduct in these proceedings.

2. Findings A, B, E and F deprive Mr. FitzGerald of due process of law since he was not put on notice of these charges. The hearings did not concern these issues and they violated the rule announced by the Supreme Court of the United States in *Earle v. McVeigh*, 91 U. S. 503.

3. Findings and conclusions A through F, inclusive, are clearly erroneous within the meaning of *United States v. U. S Gypsum Company*, 333 U. S. 364, 92 L. Ed. 746.

4. That as evidenced in the 47 findings of fact, findings and conclusions, this Court under the doctrine of *Whitaker v. McLean*, 118 F. 2d 596, should enter an order striking the memorandum, findings and conclusions of law in their entirety and enter an appropriate order certifying all matters in this case to another judge since through no fault of the Court it has been the recipient of an inflammatory letter from the defendant Cassidy charging Mr. FitzGerald with criminal acts and it is apparent that this letter, coupled with statements made by Mr. Willett in open court, have prejudiced the Court in its feeling and attitude toward Mr. FitzGerald.

5. The Court should strike and order expunged from the record all findings and conclusions of law contained in the memorandum insofar as they attempt to prejudge the merits of litigation existing in the District of Columbia.

6. The Court, in lieu of all the requests listed above, should enter an order vacating its findings of fact, findings, conclusions of law and judgment entered and should enter

a judgment divested of all findings of fact and conclusions of law admitting Mr. FitzGerald to practice *pro hac vice*.

/S/ HUGH R. TANKERSLEY,
126 Poplar Street,
Fairfax, Virginia.

/S/ ALBERT J. AHERN, JR.,
National Press Building,
Washington, D. C.

/S/ JAMES J. LAUGHLIN,
Washington, D. C.
Counsel for Plaintiff and Benedict F. FitzGerald, Jr.

CERTIFICATE OF SERVICE

I hereby certify that I have this 3rd day of May, 1957 mailed copy of the foregoing Motion to Vacate Findings of Fact, Findings and Conclusions and Judgment Entered by this Court to John R. Willett, Esq., 1705 Fern Street, Alexandria, Virginia, Counsel for the Defendant.

/S/ HUGH R. TANKERSLEY.

Order Denying Motions of Benedict F. FitzGerald, Jr., Esquire, to Vacate and Amend the Memorandum, Findings, Conclusions, and Judgment on his Request for Admission.

Order Denying Motions of Benedict F. FitzGerald, Jr., Esquire, to Vacate and Amend the Memorandum, Findings, Conclusions, and Judgment on his Request for Admission.

(Filed May 13, 1957.)

Upon consideration of the motions of Benedict F. FitzGerald, jr. Esquire, to vacate and amend the memorandum, findings, conclusions, and judgment heretofore made, filed and entered herein upon his request for admission to practice in this court in this case, it appears to the court that the motions raise no new questions of fact or law, that all of the matters set forth in said motions have been heard by the court at length, and that no ground is now shown warranting a rehearing of them, and the Court is of the opinion that the said memorandum, findings of fact, conclusions, and judgment are supported by the evidence and should not be vacated or amended in the respects stated in the motions.

Therefore, it is

ORDERED that each of the said motions be, and it is hereby denied.

(sgd.) ALBERT V. BRYAN,
United States District Judge.

A true copy teste

WALKLEY E. JOHNSON,
Clerk.

(SEAL)

By FRANCES E. MUMFORD,
Deputy Clerk.

Letters written by Billie Smith Cassidy to Jay H. Thomas, Jr.

Letters written by Billie Smith Cassidy to Jay H. Thomas, Jr.

Note

These letters (9 sheets)
are on card 2.

Defendant's Exhibit No. 1.

Defendant's Exhibit No. 1.

(Filed March 25, 1957.)

This letter was read into the transcript on printed page 244a.

Plaintiff's Exhibit No. 1.

Plaintiff's Exhibit No. 1.

(Filed March 25, 1957.)

BENEDICT F. FITZ GERALD, JR.
COUNSELLOR AT LAW
NATIONAL PRESS BUILDING
WASHINGTON 4, D. C.

STerling 3-2057

Note

Plaintiff's Exhibit No. 2 is on card 3, in frame to right of guard hole.

Plaintiff's Exhibits 1 and 4.

(Filed on January 4, 1957 and April 8, 1957.)

C & PS

CRIMINAL WARRANT

Commonwealth of Virginia: To all and any of the Police Officers of the City of Alexandria:

WHEREAS J. H. Thomas has this day made complaint and information on oath, before me, Helen S. Gorman, Clerk, the undersigned, that Benedict Fitzgerald on or about the 22 day of November, 1955, in said City, did feloniously violate Title 18, Section 164, Code of Virginia, in that he did take, steal and carry away from the vicinity of Ripley Street, Alexandria, Virginia, one brief case valued at $70.00, and a negotiable note valued at $987.00, the goods and chattels of the said J. H. Thomas and did also unlawfully violate Title 46, Section 9, Code of Virginia, in that he did tamper with the automobile of Mrs. B. F. Cassidy, while said automobile was in the custody of J. H. Thomas, and while said automobile was parked in the vicinity of Ripley Street, Alexandria, Virginia, this against the peace and dignity of the Commonwealth of Virginia.

These are therefore, in the name of the Commonwealth of Virginia, to command you forthwith to apprehend and bring before the Civil and Police Justice of said City, the body of the above accused to answer said complaint and be further dealt with according to law.

And, moreover, upon the arrest of the above accused by virtue of this Warrant, I command you in the name of the

Plaintiff's Exhibits 1 and 4.

Commonwealth of Virginia to summon the following witness:

[ ] J. H. Thomas, 521 Ripley Street

[ ] Mrs. B. F. Cassidy, 521 Ripley Street

[ ] Mrs. Alexander, 521 Ripley Street

[ ] Mrs. McCormick, Silver Springs, Md.

[ ] .....

to appear at the Civil and Police Court as witnesses to testify in behalf of the Commonwealth of Virginia against the said Benedict Fitzgerald.

And have then and there this Warrant, with your return thereon.

Given under my hand and seal this 25 day of November 1955.

HELEN S. GORMAN,
Clerk of said Civil and Police Court (SEAL)

.....
Justice of the Peace of said City (SEAL)

Motions.

[1] **Stenographic Transcript of Proceedings of January 4, 1957.**

IN THE

UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF VIRGINIA.

ALEXANDRIA DIVISION.

———o———

IRENE R. THOMAS, *Plaintiff*,

vs.

BILLIE SMITH CASSIDY, *Defendant*.

Civil Action No. 1245.

———o———

Before United States District Judge Hon. Albert V. Bryan.

January 4, 1957.

Appearances:

Edward D. Harrigan, Esq., Hugh R. Tankersley, Esq., For the plaintiff.

John R. Willett, Esq., For the defendant.

[2] PROCEEDINGS.

* * *

Mr. Tankersley: If your Honor please, I have a motion to make. I would like to move the admission of Benedict F. FitzGerald, Jr., to associate as nonresident counsel in the case of Thomas vs. Cassidy. I am to be [3] resident counsel in that case.

The Court: All right. Pass that for the time—

Mr. Willett: If it please the Court, I have an objection to that motion. I am counsel for the defendant, Mrs. Cassidy; the reason being, your Honor, you recall that some time ago when we were at pretrial stages, was indicated that a criminal warrant was outstanding against Benedict FitzGerald, and at that time you indicated that you didn't think Mr. FitzGerald should come into the case until that was cleared up. The warrant was obtained, as I have been advised, in Alexandria and served on him as a technicality and I have been advised that Mr. Thomas is still trying to get the warrant in Alexandria and that matter has not been cleared up.

Now Mr. Thomas has been trying to get service on Mr. Cassidy in that criminal matter, and I don't think that Mr. FitzGerald should be permitted to practice in this court until that is taken care of.

The Court: All right. I will take that up with you gentlemen just as soon as I can reach it, in view of the rest of the matters here on the docket.

Mr. Willett: All right, sir.

Mr. Tankersley: Thank you, your Honor.

(After recess.)

The Clerk: The next case is Civil Action No. 1245.

The Court: Well, we will take up first the motion [4] of Mr. Tankersley for permission of Mr. FitzGerald, his associate—

Mr. Tankersley: Yes, your Honor, I have a written motion to permit the entry of appearance of Mr. FitzGerald, your Honor. I might say briefly that Mr. FitzGerald is a member of good standing in the American Bar Association, the District Bar Association, the Massachusetts Bar Association, and the Boston Bar Association; he is forty-one

years old and his professional career has worked as a counsel for two congressional committees. He has been a former aide to John W. McCormack, who is Majority Leader of House of Representatives. He is a lieutenant commander—

The Court: Well, he is admitted to practice in the District of Columbia.

Mr. Tankersley: Yes, sir; he is.

The Court: All right.

Mr. Tankersley: Mr. FitzGerald is counsel for the plaintiff in this case and several other causes of action that are intertwined with the present case and is familiar with all the details in this case and would aid materially, if he were permitted to associate as counsel in this case.

Now Mr. Willett's motion or opposition to the motion, Mr. Willett mentioned, I believe, some criminal charges. I have discussed those with Mr. FitzGerald and his associate, Mr. Harrigan, and Mr. Harrigan has checked [5] into those charges and can explain to your Honor what he found there. At this time I'd like to introduce Mr. Harrigan.

The Court: Well, I think we can shorten this a good deal. This case has been here in the first place—it's been here too long.

Mr. Tankersley: I will agree with that.

The Court: Mr. FitzGerald appeared on the pleadings originally, as I recall it, and it came on for pretrial conference, I think first in January of 1956. At that time I think Mr. FitzGerald wrote that by reason of some other engagement he could not be present and asked that the conference be continued, or deferred for the time being and that was done to meet his convenience. By the next pretrial conference there had been filed in the papers of

affidavit by, I believe, the defendant in the case, stating that there was a warrant outstanding in the State of Virginia for Mr. FitzGerald for breaking into her automobile, or someone's automobile. If I am correct in that narrative, let me know—and when the counsel appeared at the pretrial conference, Mr. FitzGerald did not appear. I think Mr. Harrigan appeared, and, it seems to me, that Mr. Brophy appeared and Mr. Willett for the other side, and at that time I called the attention of counsel to this affidavit and to the statement in there that the warrant was outstanding, and I asked if the warrant had been answered or had been executed. My recollection is I was [6] informed that it was still outstanding, and I think it was my suggestion then, or I made the point that I did not think that the cause ought to proceed until that matter was cleared up.

Thereupon counsel present asked that the case go ahead, that the matter would be cleared up in the meantime. I heard nothing more about it until there appeared in the file, I think, a letter from Mr. FitzGerald withdrawing from the case as counsel, and I believe the next step was he wrote saying that he would like to re-enter the case, in reply to which I told him the steps to take, that is, to have his associate move his admission and that the motion would come on for consideration like in any other motion.

Now what I want to know first is if this warrant is still outstanding, what is the disposition of the warrant, and anything else that you want to know. My disposition, of course, is to admit counsel to practice, no matter where they are admitted to practice and glad to have them, but I could not be in the position of having counsel in the case against whom there was an outstanding warrant unanswered. The Court would then be in the position of allowing counsel to participate and yet not answering a warrant

issued by the State, and then at the last pretrial conference Mr. Willett mentioned that there had been letters circularized or certainly correspondence, in vilification of his as counsel.

[7] I wanted to know from counsel on the other side, that is, for the plaintiff, if they have any part in any such abusive conduct. If it is, I want to go into that. Now that is the disposition of the Court. I want Mr. FitzGerald in the case, but I cannot have him in if there is any question about this warrant being unanswered.

Mr. Tankersley: Yes, sir.

The Court: I will be glad to have him testify on that, or have you make a statement about it.

Mr. Tankersley: Well, if your Honor please, to my knowledge the warrant has been withdrawn. However, Mr. Harrigan is in a better position to explain the full circumstances of that to your Honor.

The Court: All right.

Mr. Harrigan: If your Honor please, my name is Edward Harrigan. I am a member of the Massachusetts Bar, and your Honor's summation is substantially mine. I might say that on September twenty-sixth—

The Court: Substantially yours?

Mr. Harrigan: Yes, I agree with your Honor's summation.

The Court: Substantially correct?

Mr. Harrigan: Yes, sir. I want to say that on September twenty-sixth of 1956 Mr. FitzGerald telephoned the Maryland attorney of Mr. Thomas, Mr. J. Harry Thomas, and said [8] to him, "The twenty-seventh of September I will be in Rockville, Maryland, in the Circuit Court to participate in the hearng on a motion to hold Mr. Thomas in contempt."

The Court: Who called you?

Discussion.

Mr. Harrigan: Mr. FitzGerald called Mr. Cullins, Mr. Joseph Cullins, who is Maryland counsel for Mr. J. Harry Thomas, and I believe, according to the docket in this court, that Mr. Willett is Virginia counsel in this case for Mr. Thomas.

The Court: Well, now, is Mr. Thomas a litigant in this case?

Mr. Harrigan: I won't say that, your Honor.

Mr. Willett: No.

Mr. Harrigan: I will say Mr. Willett has filed appearance in this case. It was docketed on February 1 of last year, so he is a litigant to that extent, and there is a motion on the docket yet unheard here to hold Mr. Thomas in contempt of this Court for failure to answer.

The Court: He is not a party to this case, is he?

Mr. Harrigan: I don't know how you will—

The Court: I will get to you in just a moment, Mr. Willett.

Mr. Harrigan: He is a litigant, although not a party, I would say, your Honor.

The Court: How can he be a litigant and not be a [9] party?

Mr. Harrigan: Well, I don't know. I'd rather have your Honor's interpretation but Mr. Willett—

The Court: He is not a plaintiff. He is not a defendant.

Mr. Harrigan: No, no.

The Court: What connection does he have with the case?

Mr. Harrigan: Well, all I can do is say, your Honor, that Mr. Willett has filed an appearance in this case, an official appearance in behalf of Mr. J. Harry Thomas. That was docketed on February 1, 1956.

The Court: Well, is he the husband of Mrs. Irene Thomas?

Mr. Harrigan: That is right, your Honor.

So, on September 27—

The Court: What I want to hear about from you is on this warrant, or alleged warrant.

Mr. Harrigan: Yes, I will have to go into that, your Honor. On September 27 of last year Mr. FitzGerald appeared in Rockville, Maryland, at the Circuit Court. At that time the Maryland, the Rockville, Maryland police accompanied by Virginia police officer served a fugitive warrant upon Mr. Benedict F. FitzGerald. As a result of that Mr. FitzGerald was booked. He was fingerprinted. He was [10] photographed, and he was placed on five hundred dollars bond for approximately six weeks, until November twelfth, to give the Virginia authorities time to get formal papers from the Governor of Virginia, or whatever was necessary in order to bring Mr. FitzGerald back to Virginia.

On November 13 a hearing was held. November 12 being a holiday. At that time, no papers were forthcoming from the Commonwealth of Virginia—

The Court: Well, is that before the magistrate in Maryland?

Mr. Harrigan: Before the Peoples Court in Maryland, Judge John Diamond. The Maryland authorities suggested that Mr. FitzGerald be held for another month or so, and the judge inquired why. Well, some police officer had spoken to another police officer and Judge Diamond said unless I hear something better, I don't like one police officer speaking to another police officer. There is no evidence before me. I have had considerable extradition experience and I feel obliged to dismiss this case and discharge the prisoner. That was the end of proceedings on that day.

Discussion.

In the meantime, on December twelfth, 1956, in the afternoon I appeared in the Civil and Police Court of Alexandria, Virginia, in the Clerk's Office, I believe. Mr. Willett was a *pro tem* judge of that court. I inquired if the records were public. They said they were. I asked if [11] there was an outstanding warrant or any record of a warrant against Mr. Benedict F. FitzGerald. The clerks conferred. Then a man came to the window and said, "I am Judge Colasanto. Can I help you?" I said, "I am. Sure you can." He says, "Come into my Chambers," and he invited in Mrs. Helen Gorman and a clerk named Mr. Jackson. The clerks informed Judge Colasanto that there was no record of any warrant having been issued there, but it was believed that they were sure that papers had been taken out. A warrant. But there was no record. It was an old warrant, that there had been a lot of talk about it, and that it had been taken over to Maryland and served, that when the time came for the police officers of Alexandria to find the complaining witnesses against Mr. FitzGerald, that being Mr. Thomas, it was difficult to find Mr. Thomas. When they found him, he was reluctant to go before the Justice of the Peace and make a formal affidavit as required under procedures in this Commonwealth.

Discussion dragged on so long that the Justice of the Peace had gone for the day. Police Officer Andrew Binark of Alexandria, Virginia, asked Mr. Thomas to return the following day and make his affidavit before the Justice of the Peace.

The Court: Now you are talking about, not your conference with the Judge, but what you learned about another conference?

[12] Mr. Harrigan: Yes. This was brought out in the conference. Some of it is hearsay, but I am sure it is all

a matter of record, and I just did that to shorten the proceedings here.

Mr. Thomas let the Alexandria authorities down. He did not proceed. Then Judge Colasanto told me, he said, "There is no record of a warrant in my court, or in this Clerk's Office. There may be, or have been one. There is no record here. From what you tell me," he said, "I dislike having a criminal warrant out of this court used as a leverage in this case."

Now he said to the two clerks then present, "If there is any further move for warrants," he said, "I don't want any warrants issued in this case unless I am consulted."

And I told him, I said, "Mr. FitzGerald would have been over before this except I advised him not to hurry over because Mr. Willett sat as a *pro tem* judge of this court," that I was unfamiliar with the procedures—

The Court: Why did you tell him not to come over?

Mr. Harrigan: Because of a groundless charge that I left—

The Court: But this was up in the pretrial conference in March, 1956, as I recall it, and that was a matter that we were to clear up.

Mr. Harrigan: Yes, I forget. I think it was. I [13] don't—

The Court: You told him not to come over?

Mr. Harrigan: I told him not to hurry over. I haven't —he did, but he wanted to learn a little more, what it was all about. He came over. I told him not to hurry over. I didn't tell him not to come over. I told him not to hurry over. And that so, eventually he came. Papers have been served.

The Court: When was that?

Mr. Harrigan: September 27, 1956.

The Court: That was in Maryland?

Mr. Harrigan: That's right.

The Court: I am talking about in Virginia.

Mr. Harrigan: Since then, your Honor, the Virginia authorities in Alexandria have returned to Mr. FitzGerald his photograph or his fingerprints. The F. B. I. have returned his fingerprints. The Maryland authorities have returned his fingerprints and records.

The Court: Has the case been *nol-prossed?*

Mr. Harrigan: The Commonwealth's Attorney, I believe, has. I don't know. He has stated in writing to Mr. FitzGerald that the complaining witness, Mr. Thomas, has proved himself uncooperative, and he says, "I have nothing further to proceed against you with." And—

The Court: Well, I have no, of course, right or [14] intention to say that Mr. FitzGerald must answer any charges. He need not answer them so far as I am concerned, but I cannot have him in the position of appearing as counsel in this case, but remaining outside of the jurisdiction of Virginia, and not answering a charge in the state.

There may be nothing to the charge, and he has a perfect right to insist upon extradition, but I do not like your advising him not to come in to answer, and yet wanting him to stay in this case—

Mr. Harrigan: Your Honor, Mr. FitzGerald is here today.

The Court: I am not talking about Mr. FitzGerald. I am talking to you.

You knew that we were waiting to have this matter cleared up and yet you told him not to hurry about it.

Mr. Harrigan: Yes, sir. May I elaborate on that, your Honor?

We had telephoned the Alexandria Civil Police Court at that time and they said they had no record of the warrant against Mr. FitzGerald.

The Court: Why didn't you tell this Court that?

Mr. Harrigan: I think I did, your Honor. I just objected in general to Mr. Willett's demeanor and conduct in the matter. He has complained, or Mr. Thomas has complained to the District Bar Association. They have rejected the [15] complaint. A civil suit was filed in the District of Columbia for $100,000 by Mr. Willett in behalf of Mr. Thomas.

The Court: That has nothing to do with this.

Mr. Harrigan: I know it hasn't, your Honor, but we just didn't have time that morning. We went on until one-thirty, extremely long pretrial.

The Court: Did not have time what morning?

Mr. Harrigan: March 9.

The Court: When you were here?

Mr. Harrigan: Yes, your Honor.

The Court: But you have had since March to bring this matter to the attention of the Court.

Mr. Harrigan: But it didn't come up until today, as your Honor says; Mr. FitzGerald wrote a letter in December asking participation. If you remember in the meantime Mr. FitzGerald, I think, had written you a letter indicating withdrawal, and I won't advise anyone to hurry over when the Clerk or Court's Office told me that they had no record. Now I don't know what happened to the record over there and we weren't even sure there was a warrant. It was all hearsay.

The Court: But you could find out.

Mr. Harrigan: I tried; yes, and I found there was none.

The Court: When did you find there was none?

Discussion.

Mr. Harrigan: I first found there was none in—I [16] don't remember the exact date, but we couldn't find out. We had difficulty finding out, and there is still no record.

And the other day the clerk—last month the clerk told me that all we have is a tissue copy of the warrant. May I see that? We don't have that. That is when Judge Colasanto called me in and—

The Court: Well, for Mr. FitzGerald's own sake in the record here there ought to be something to show the disposition of that warrant. Otherwise, we just have it in nebulous shape.

Mr. Harrigan: Mr. FitzGerald, your Honor, had correspondence with the Commonwealth's Attorney for the City of Alexandria, Mr. O. Wagner—I would suggest perhaps Mr. FitzGerald could elaborate on this matter of the correspondence with the Commonwealth's Attorney himself. I don't think there is a warrant. And I think it has been disposed of. It is a most—

The Court: I think you are taking it too lightly, casually, going by what you think it ought to be a matter of record. If you want to have, call Mr. FitzGerald as a witness to prove these facts, I will be glad to hear him, but I cannot take just your casual conclusion of it.

Mr. Harrigan: Well, I can see your Honor's point, but I don't understand it myself. As far as I am concerned there is no warrant.

[17] The Court: Well, I know, but you cannot expect me to act on that, take your word for its full value. You just do not know.

Mr. Harrigan: Well, unless there is some officer or some clerk telephoned downtown—

The Court: I would not go by the telephone. It is a matter that ought to be established for the sake of Mr.

FitzGerald and this case because here is an affidavit in the file, and there is nothing opposing it.

Mr. FitzGerald: May I be heard, your Honor?

The Court: Do you want to be? Do you want to testify?

Mr. FitzGerald: I would like to see if I can answer some of the questions that your Honor has put out, and I think I have material either way.

The Court: All right. I will be glad to hear from you.

Mr. FitzGerald: For the purpose of introduction I am Benedict F. FitzGerald, Jr., member of the bar of the District of Columbia, Commonwealth of Massachusetts—

The Court: Well, that is all right. I understand you are committee counsel in Washington. That is sufficient.

Mr. FitzGerald: Office at 1152 National Press Building, associated with William P. McCracken, Jr.

Now as you see here, I have lived with this case as [18] well as three companion cases and probably know a trifle more than the other counsels who have just spoken.

I am attorney for Irene R. Thomas, Jr., of 10015 Markham Street, Silver Spring, Maryland, the plaintiff, and I instituted action—

The Court: I understand that, Mr. FitzGerald. I want to know about this warrant. Is there such a warrant existing?

Mr. FitzGerald: Well, now, there is not, as far as I can—

The Court: Has there ever been?

Mr. FitzGerald: There must have been or I wouldn't have been arrested on my way to a court house.

The Court: I am not talking about "There must have been." Have you seen it?

Discussion.

Mr. FitzGerald: Yes, I have. I was served with a copy of it. I have a copy with me, if your Honor would like to see it.

The Court: Has that been dismissed?

Mr. FitzGerald: Yes, it has, so far as I know.

The Court: Do you have a record of the dismissal?

Mr. FitzGerald: I did.

The Court: Well, let me have it.

Mr. FitzGerald: I have a letter from the D. A., which I can deliver to this Court this morning, and in [19] absence of that your Honor can call the D. A., Earl Wagner.

The Court: I am not going to call the District Attorney. Let me have the letter.

Mr. FitzGerald: I don't have it with me. I have it my office.

The Court: Did he appear in court and move to dismiss it?

Mr. FitzGerald: No, he did not. I wrote him and asked him if there was a matter--

The Court: Why do not you have him do that?

Mr. FitzGerald: I will be glad to do that.

The Court: Then let the order be sent up here.

Mr. FitzGerald: But I will be glad to do that. However, I would like to point out, your Honor, that this is an interference with justice, this whole thing, and I don't think it should be given the amount of weight that is being attached to it.

The Court: Well, I think it ought to, and that is the reason I raised it.

Mr. FitzGerald: Well, your Honor—

The Court: Just a minute. You listen to me for a minute. Here we had on file uncontroverted a statement

that you were a defendant in a criminal warrant and that was outstanding and was unanswered. Now the Court could not let that go on and still let you appear as associate nonresident [20] counsel. I think that can be cleared up just by the method you have indicated, but let us do that.

Mr. FitzGerald: All right. I might—I just want to point out it is the first time I have had the pleasure of meeting your Honor, first time have been in this court, in this courtroom, and there have been a lot of things said here that I don't know—

The Court: I am glad to have you here and I hope that you will come here very often, but you see the situation that the Court was in—

Mr. FitzGerald: I do.

The Court: And I want that cleared up. We have counsel from Washington come over here and counsel from Virginia go over there and it is a very happy arrangement. Now you let me have that order of dismissal.

Mr. FitzGerald: Well, let me tell you what I have. I wrote to District Attorney Wagner and asked him what the status was and I sent Mr. Harrigan over there and Mr. Harrigan says that there was no warrant on file in the court. Earl Wagner, the District Attorney, said, that although there was some action taken informally, I don't think he specifically mentioned the word warrant, that it had been abandoned and he would have nothing further to do with it.

Now, in addition I retained the services of Brooke Howard, one of the attorneys in the Commonwealth, with whom [21] you no doubt are familiar, and I had him look into the situation and he told me that there wasn't anything over here. I certainly wanted to appear, if there was anything pending against me.

The Court: That is the reason I could not understand the case. If there is a charge against an attorney, this Court has no right to require him to appear before it, but it does occur to this Court now if there is a charge, why should a man not appear and answer it?

Mr. FitzGerald: Well, if there is a charge, your Honor, why don't they come up here and serve me? I will go down there this afternoon. I will be—

The Court: The same thing occurred to me, but I wondered why from March until December you had not appeared.

Mr. FitzGerald: Well, your Honor, I am a very busy man. I am counsel of record in ten—

The Court: Nobody is busier—just a minute, sir. There is nobody busier than the State's business.

Mr. FitzGerald: Well, now, you're asking me a question. I would like to answer it.

The Court: Well, you have answered it.

Mr. FitzGerald: You—

The Court: Rather, you have not answered it.

Mr. FitzGerald: I will tell you why I didn't appear. I wouldn't appear because I was threatened by [22] Judge John R. Willett that if I didn't drop this suit that he would institute criminal action against me, and that he would sit on the criminal action and that if he didn't sit personally, that he would have an associate judge sit and see that I was taken care of summarily.

Now with a threat like that made in my office in Washington, D. C., I felt that there wasn't too much justice in the Police Court of Alexandria.

Mr. Willett: Your Honor, may I speak to that charge?

The Court: Just a minute.

Mr. FitzGerald: I'd been a little upset with the conduct

of Mr. Willett, who filed a suit against me for a hundred thousand dollars alleging libel and I went down to the court and was told that that had been abandoned. Now I also went to the Bar Association and was told another complaint had been filed, but was told by someone in authority down there that the person filing the complaint appeared to be kind of psychotic.

The Court: Well, I do not want to go into that, Mr. FitzGerald. I do not think that you have given me a good reason for not appearing to answer the Virginia charge because the Virginia Courts are thoroughly to be trusted and relied upon. However, this Court had no right to require you to do it, but that the inquiry that occurred in the [23] Court's mind as to why you did not appear.

Mr. FitzGerald: I will go down this afternoon, your Honor.

The Court: All right, sir.

Mr. FitzGerald: Straighten that out.

The Court: I think that is the wholesome thing to do, and let me have an order showing the dismissal of the charge.

Mr. FitzGerald: Well, I will attempt to do that. However, as I say, we have been told that there is no charge on file down there.

The Court: But you also have a letter from the prosecuting attorney saying that he is not prosecuting, so there must be a charge.

Mr. FitzGerald: That is right.

The Court: All right.

Mr. FitzGerald: I might say this charge, or warrant, and I will give you a copy, if you'd like for the record here this morning—this warrant is not an indictment. It is a copy signed by a clerk and maybe you'd want a copy

for your records. It is signed by my brother-in-law, J. Harry Thomas, Jr., and was executed after the commencement of this action.

The Court: Is that the warrant of arrest?

Mr. FitzGerald: The warrant of arrest was executed.

[24] The Court: You want to put that in the file?

Mr. FitzGerald: If you would like.

The Court: Well, I have not any desire for it, but I will receive it, if you want to offer it.

Mr. FitzGerald: I would like to offer Exhibit 110, Plaintiff's Exhibit 110, which is copy of the warrant purporting to have been executed on the twenty-fifth day of November, 1955, on the oral complaint of J. H. Thomas, Jr.

The Court: The warrant was not executed, never has been executed until September of '56; that is the date of issuance?

Mr. FitzGerald: Date of issuance by the clerk.

The Court: All right. Let it be filed.

All right, Mr. Willett.

Mr. Willett: Your Honor, let me say for the record that I have no personal interest in this case and I hesitate to object to the appearance of any counsel, whether it be Mr. FitzGerald or anyone else. However, so that the Court would have a complete understanding, as you have been advised, a suit was brought on adulterous charge for divorce in Maryland by Mrs. Thomas against Mr. Thomas.

Subsequent, or while that case was pending, this suit came about in our court, your court here in the United States District Court for the Eastern District of Virginia.

The Court: What was the first suit, a divorce suit?

[25] Mr. Willett: The first suit was a divorce action. Mrs. Thomas filed a divorce action against Mr. Thomas

in Maryland. While that case was still pending, Mrs. Thomas instituted this action against Mrs. Cassidy in the State of Virginia, in the United States District Court.

I represent Mrs. Cassidy, and insofar as this case is concerned only I will represent Mr. Thomas as I have manifested in writing to the Court. I don't know what is taking place in Maryland. I have only heard vicariously and I would not cloud the record with what I don't know to be factual. I have no knowledge about any complaints brought against Mr. FitzGerald because I have never heard anything bad about him. I have only met him one time in my life, and I am sure he is a gentleman of high caliber.

The sole reason I object to that matter is the Court has printed out on March 9 in pretrial, 1956, when it was brought to the Court's attention that this warrant was outstanding, you indicated it should be cleared up before we go forward.

Now, Mr. Thomas advised me as recently as a week ago that there was a technicality on the warrant that he asked for in the Civil and Police Court, and he told me that the matter was not cleared up, that he was still going forward.

If it please the Court, Mr. FitzGerald and the defendant, or rather Mr. Thomas', brother-in-law, Mr. [26] FitzGerald is the brother of Mrs. Thomas, and so there has been more of a profound interest taken in this case than normally counsel would associate themselves. We have counsel brother fighting against former husband and brother-in-law. At no time have I ever made any kind of a threat or statement to Mr. FitzGerald. I don't even know him that well. We spent some time in his office, about two hours on a deposition that was to be taken in connection with the, one of the candy companies. That is the sole time I have ever encountered the man.

I know for a fact this matter is not cleared up because I directed a letter after March 9, being in the pretrial, to Mr. Wagner. He telephoned me or I telephoned him, and he indicated it was outstanding.

On one—

The Court: How long ago was that?

Mr. Willett: Sir, that was within, I would say, five days from March 9. On one occasion when I came over to the Court on a pretrial, one of the detectives in Alexandria was here to see if Mr. FitzGerald would make his appearance.

Now, it is true that an action was brought—it is not on record now—in the District of Columbia, for the reason that the Marshal could not get service on Mr. FitzGerald. Mr. FitzGerald wasn't at this office, and the [22] Clerk's Office notified me that they were dismissing it in accordance with the fact that the service had not been made in the statutory time. Now since this case has come about and because of the adverse trend it's taken, it's very difficult to proceed to get to the merits.

You already indicated, your Honor, that this is a case that should be settled. As counsel for Mrs. Cassidy, I have tried to be reasonable. I said in pretrial that we would like to settle the matter. You indicated you felt—

The Court: That was pretrial.

Mr. Willett: At pretrial, that it should be settled. May I point out to the Court this is the fourth attorney representing the plaintiff? Mr. Brophy—I've had a lot of conversation with him and he today, as you know, has withdrawn. Now insofar as the statement is made this morning by Mr. FitzGerald, one day when I was on some other court business in the Corporation Court of Alexandria, an attorney, Mr. T. Brooke Howard, that I respect very high-

ly, asked me about the nature of this case and when I told him it, the general situation, he said he didn't think he would get into it, but he didn't say to the undersigned that he had checked and there was no warrant outstanding.

Now, the reason the warrant has not been brought and Mr. Thomas appeared before the Justice of the Peace is because that every place he goes he is hounded. Count less number of [28] letters that I have with me from Mrs. Cassidy, the defendant's husband, her mother-in-law, former employers and my client, the defendant telephoned me less than fifteen days ago to say one night when she came out from her place of work, Mr. FitzGerald and a woman were sitting outside and they drove off immediately.

Mr. Thomas and Mrs. Cassidy have both complained to me that every place they go someone is following them. Mrs. Cassidy said someone was down in her apartment and it's not the type of action that should be associated with the case.

We have a court to decide this on the merits. Let us forget about the personalities and the in-laws and let us go forward and try it on the merit and let justice prevail. But I take, and the sole complaint that I have, is the fact that letters are being circulated by someone—I don't know whom—but such statements as "the nincompoop Willett" in sending a letter like this, with a copy—"The Maryland woman granted divorce in love triangle," naming my client, Mrs. Cassidy, in this case, and saying to these people, "Why don't you get rid of the nincompoop Willett?"

The Court: How many of those did you receive?

Mr. Willett: I haven't received any directly, your Honor, but Mr. Cassidy and Mr. Thomas have brought to me one, two, three, four, five—I have five with me and I be-

Plaintiff's Exhibit 19

NORTH AMERICAN AIRLINES

AGENCY CORPORATION

EXECUTIVE OFFICES • Lockheed Air Terminal, Burbank, California
THornwall 2-6181

My darling one,

We have been in flight for two hours. We had one little rough bit about an hour ago, but no more so far. (at all I hope).

Every minute takes me further away from you, my love, and makes me lonely. Thank you so very much for coming to see me off. My whole being is so full of love for you that I ache when I can't feel your touch on me and mine on you. I'm so glad I have part of you with me. Darling, you must know how deep my love is for you and have faith in it. We need never worry about our happiness if we are always as aware of each other feelings as we are now! This is a most precious gift, our love, sweetheart, so please

Plaintiff's Exhibit 20

NORTH AMERICAN AIRLINES
AGENCY CORPORATION

EXECUTIVE OFFICES • Lockheed Air Terminal, Burbank, California
THornwall 2-6181

don't let anything happen to it ever. Ok, honey, you are so perfect to me in every way — and to be made love to by you is beyond description — please don't ever love anyone else — I just can't bare with the thought. You are my own true love and no one but you can ever touch me.

How can I thank you for all the beauty you've brought into my life, Jay? Your love and all of your wonderful presents! The greatest of all is the complete contentment and pleasure in just being by your side surrounded by our love! As we say, my baby dear, we've got it bad!!!

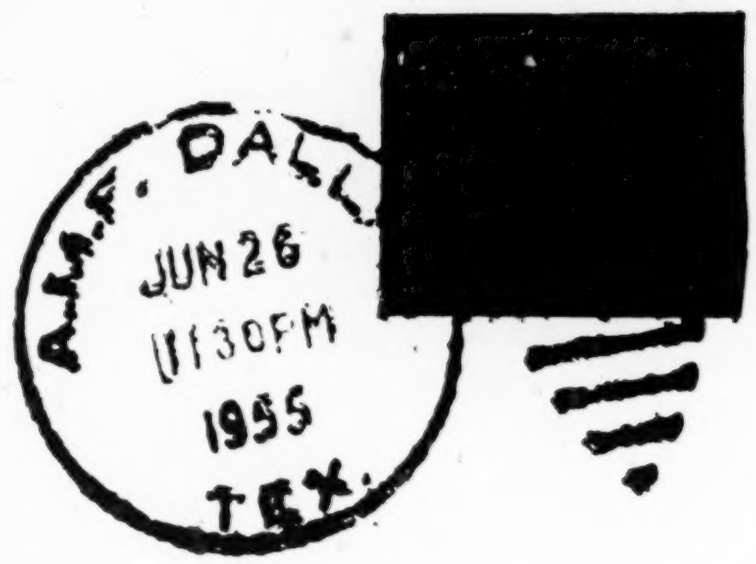
I better close this now, and try to dream of you — awhile.

Always yours alone,

Bill

Plaintiff's Exhibit 21

6431 Abrams Road
Dallas 14, Texas



AIR MAIL

Hon. Jay H. Thomas, Jr.
P.O. Box 3715
Washington, D. C.

Plaintiff's Exhibit 22

Sunday night-

my love.

How marvelous your voice did sound to me this morning. I do wish we could do that every day. I simply can't bear being separated from you, sweetheart. I'm so lonely and lost away from you that I'm miserable. What a glorious thing this love of ours is. Don't ever let even the slightest change come to it, Darling! I adore you with all my heart. Miss me lots, my baby dear ———

This afternoon Darla.

Plaintiff's Exhibit 23

(a friend of Helen's) Helen, and
I went to see "South Pacific."
They had never seen it before.
I couldn't keep the tears back
all the way through it. The
music was so lovely, their
love was so beautiful, and I
could hardly see the stage
for seeing your face, Love.
Everyone that sang seemed to
have face and I ached with
longing for you. You are
my life and happiness, dear
one !!!

I will go down and find
the record for you tomorrow.
I'm bound to find it in
one of the shops.
I'm going to have to close

NORTH AMERICAN AIRLINES
AGENCY CORPORATION
BOX 29, LA GUARDIA AIRPORT STATION
FLUSHING 71, N. Y.

Air Mail
Special Delivery

A.M.F. DALLAS
JUN 23
11 PM
1955
TEX.

PTS

[redacted]

Mr. Jay H. Thomas Jr.
Studebaker - Packard motor Cor.
247 + 17 St. N.W.
Washington D.C.

Peterson

WASHINGTON, D.C.
DEL. SEC'N
JUN
24
3.30PM
1955

Plaintiff's Exhibit 18

Plaintiff's Exhibit 24

now 'cause I have to drive all the way out to the air port to mail this so you can get it tomorrow, sweetie.

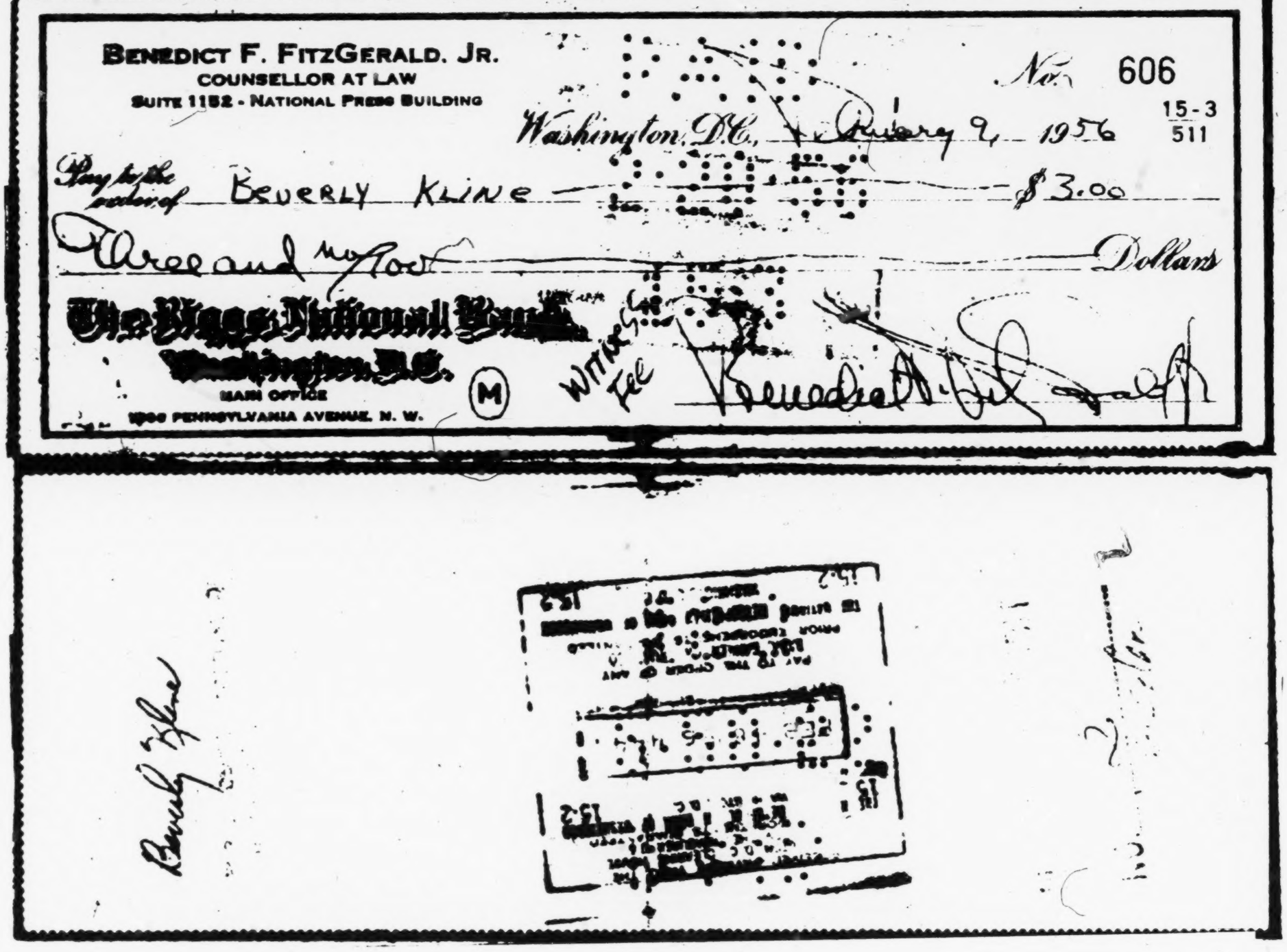
I get so excited thinking about Thursday I can hardly stand it. I ache to feel your arms around me holding me close — don't ever let me go.

Be good, darling, and take care of yourself for me. I

Love my every song, my every word, my every flower —

Always your-
Billie

Plaintiff's Exhibit 2



BENEDICT F. FITZGERALD. JR.
COUNSELLOR AT LAW
SUITE 1152 - NATIONAL PRESS BUILDING

No. 606

Washington, D.C., February 9, 1956

15-3
511

Pay to the order of BEVERLY KLINE $3.00

Three and no/100 Dollars

The Riggs National Bank
Washington, D.C.
MAIN OFFICE
1900 PENNSYLVANIA AVENUE, N. W.

(M)

WITHIN 48 Hrs

Benedict F. FitzGerald

Beverly Kline

2

Plaintiff's Exhibit 3

(page 394a)

Russell Stover Candies

Russell Stover Candies
1343 "F" St., N.W.
Washington, D. C.

FRAGILE
KEEP AWAY FROM HEAT

CONTENTS—Merchandise, 4th Class Mail. POSTMASTER: This parcel may be opened for postal inspection. Return postage guaranteed.

ZONE_____

TO MRS BILLIE Cassidy

6831 LORNA LANE

DALLAS 14

TEXAS

C 22033

FROM_____

DATE	SALES GIRL	RUSSELL STOVER CANDIES 1343 "F" St., N.W. Washington, D. C.	ENCLOSURE Yes ☑ CARD No ☐
2-9	BK		

QUANTITY	SIZE	ITEM	TOTAL AMOUNT
1	1 3/4	Heat	3 00
		MERCHANDISE TOTAL	3 00
		TAX	
		SHIPPING CHARGES Carton, Postage, Packing and Insurance	66
		SPECIAL DELIVERY ☐ C.O.D. ☐	
		Total	3 66

SENDER'S NAME AND ADDRESS:

J H THOMAS

BOX 3715

WASH DC

PHONE_____

C 22033

N-M.

THE CAVALIER

SIDNEY BANKS, GENERAL MANAGER

Nº 8828

ROOM 805

AMERICAN PLAN

RATE 5/18/24 EP

ARRIVED: BREAKFAST
LUNCHEON
DINNER
LODGING

RES.

NOTE:
CLERKS MUST TIME STAMP HERE
EXACT TIME OF GUEST'S ARRIVAL

NAME Mrs Miss Jay H Thomas Jr.

STREET 1242 - 24th NW

CITY Wash. STATE D C

86143
POLIO NO.

SIGNATURE CLERK REGISTERING

lieve there are three or four more. Now if the Court would like to [29] look at them, you can see the problem that—

The Court: Let me see them.

Mr. Willett: I just don't think that is any way to conduct a case in the United States District Court.

Now if this matter can be clarified by the warrant and I have no interest in that, I am more than pleased to have Mr. FitzGerald or any other attorney come in the case. My sole interest in this matter is to represent my client, not personalities.

Now, your Honor, may I conclude by saying that I categorically deny any reference whatsoever to my position as a substitute judge in the Civil and Police Court, and any statement or threat to Mr. FitzGerald.

The only time I have ever been in the man's presence on the first appearance was to take the deposition in his office of the two people connected with the Russell Stover Candy Company. Mr. FitzGerald didn't even know that I was a substitute judge at that time, and since that time this case has been handled by Virginia counsel of record, Mr. Poston, and then subsequently Mr. Brophy. All contacts that I have had have been occasional ones with Mr. Harrigan when we met over here, but I not only haven't been able to discuss anything with Mr. FitzGerald, I have had to write letters, but I could never find him in if I wanted to discuss things with him, and I certainly wouldn't take or be [30] unethical enough to try to make a threat to any lawyer and I am sure the caliber of Mr. FitzGerald wouldn't accept any threats because he knows how preposterous it would be—State Court against Federal Courts—and not tie in personalities of counsel and brother and brother-in-law.

An unfortunate situation also that has caused us trouble, Mr. Thomas advises me and I have had a personal call from the dean of a law school that Mr. Thomas was attending saying that as a result of his brother-in-law's action, Mr. FitzGerald, he has been removed from law school; attention was brought to the law school and services were made for summonses on Mr. Thomas while a student and the dean of the school called me to find out what the facts, nature of this action was, and I explained to him it was a civil action; I knew nothing about the Maryland affair—but the dean told me that Mr. Thomas was going to be removed from law school as a result of it.

Now Mr. Thomas attributes all of this to Mr. FitzGerald, so we have had a very unfortunate situation.

Then I don't know the merits of whether or not Mr. FitzGerald has done anything to Mr. Thomas insofar as the automobile and without knowledge, but it is reported that he broke into an automobile and took some papers while trying to get evidence for either the Maryland case or this one. So we have a very unpleasant and very unfortunate situation.

[31] We have tried reasonably to see if they'd enter into reasonable settlement. We don't admit any liability at all, but we do feel that this is the kind of a case that should be settled. No good can be caused for counsel on either side, for the parties on either side, for the Court—I don't know what more we can do. We do hope we can eliminate these motions and get to the merits that can be closed up.

The Court: Now a letter of this sort—Mr. Willett has just shown to the Court—ought not to be circularized. I would like to know if counsel for the plaintiff have any knowledge of the source of this.

Mr. FitzGerald: May we see the letter your Honor is referring to?

The Court: Certainly.

Mr. FitzGerald: Your Honor, I see the first letter here before me is a letter dated—

The Court: Now, let your counsel speak on that.

Mr. FitzGerald: It isn't a letter. It is merely a clipping.

The Court: I say, let your counsel speak on that.

Mr. Harrigan: Your Honor, if I might say briefly, as I recall, around November 7 we had a conference in your Chambers. At that time Mr. Willett mentioned something similar to these communications by mail. He informed your [32] Honor that the F. B. I. and the Post Office Department were investigating and I have confidence in the F. B. I. and I think he should at this time say, tell us if any progress has been made by the—

The Court: I am not interested in that. What I am interested in is whether or not counsel for the plaintiff have any knowledge of the source of this.

Mr. Harrigan: Certainly not, your Honor.

Mr. Tankersley: Your Honor, I certainly have no knowledge of the source of any of these papers and I would suggest that inasmuch as this is a Federal proceeding that, and there could possibly be contempt of court, I think in doing something like this—

The Court: I do not want to go into that. I do not want to—do not want the case conducted in any such atmosphere and I am not going to permit it for a minute; any bullying tactics or any overbearing tactics; it will not be tolerated. I am quite sure that counsel would not participate in any such circularization and I take it that you

do give me your assurance, all three of you, that you have no knowledge of the source of any vilification.

Mr. FitzGerald: I do, your Honor, and I want to further say that that was one of the reasons of asking prior counsel to withdraw, when I heard that he had been charged with circularizing these things, I asked him to withdraw. [33] He told me I had nothing to do with it and every time a complaint has been made against counsel, I have had them withdraw, and the prior counsel, Mr. Poston, was charged with unethical conduct by Mr. Willett, and I had him withdraw. I will keep on putting in counsel if I hear of anything wrong going on, so far as I am concerned.

The Court: You have given me the assurance, all three of you, that I asked for.

Now, there is another thing here. I think it was when Mr. FitzGerald was in the case, either notice of taking of depositions or notice of preparing of interrogatories was made to the deputies of this Court, or one or more of them. I do not like, as I explained to you gentlemen, and Mr. FitzGerald was not here, and I will explain to him now —I do not like officers of the Court being called in as witnesses without first having the Court consulted. Any information that any officer of this Court has will be made available, freely available to any of you, but this thing of saying that you are going to take this deposition and that deposition of an official of the Court is not a practice that I like, but any information that you want will be furnished to you, if it is in the possession of any of the court officers.

* * *

[34] Mr. Willett: Now, I would like the record to be clear that at no time have I ever charged any unethical conduct on the part of Mr. Raymond Poston. I know nothing that

is other than complimentary about him. The only thing I said was that the Virginia Court required, or the rules of the Court require that there be a local attorney of a local office and Mr. Poston withdrew when it was found that he did not have a business office. That was the only difficulty that has ever come up and was a mere technicality; nothing as to the ethics of Mr. Poston, when he talked to him in this matter, while he was in here, he was always very fair, very ethical, as Mr. Brophy has been, so I have never had any difficulty with any attorney and I want that to be clearly understood, and if we can get this cleared up, I'd have no objection to Mr. FitzGerald. I'd just like to know what I am going—

The Court: You file the order dismissing this warrant with the Court. I will leave open the question, the [35] motion to admit Mr. FitzGerald and give you a chance to get that in.

Mr. Tankersley: All right, your Honor.

There are several other motions pending that we would like to dispose of this morning.

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[44] Mr. Tankersley: P-o-n-c-e. They are the Managing Director and Assistant Manager respectively of the Cavalier Hotel in Virginia Beach, Virginia. We served notice on the defendant that these depositions would be taken, your Honor, and those notices—

The Court: Now that is the deposition which Mr. Harrigan and Mr. FitzGerald went out without any local counsel and took in Virginia Beach?

[45] Mr. Tankersley: Yes, your Honor, after notices of the taking of the deposition was served.

The Court: Well, I do not know that that affects the

validity of it, but I do not like it, especially when I had written Mr. FitzGerald that it was a matter of courtesy to him of this local rule requiring local counsel to appear in Court, and I think this deposition was taken after that letter was written.

Mr. Tankersley: I have that letter here somewhere.

The Court: And Mr. Harrigan was advised of that, too; must have been.

Mr. Tankersley: Well, your Honor, Mr. Harrigan has just given me a note here and the only thing I can say to that is that they were unaware that local counsel must be present at the taking of depositions.

The Court: Well, they make the point in their answer here the taking of deposition is not appearing in court. Of course, it is the equivalent of appearing in court; any contempt would be contempt of court, but aside from that, I just do not like that way of doing things. This whole thing about Mr. FitzGerald's admission here could have been settled so simply. Mr. Harrigan's advice to him not to hurry over was certainly poor, poor advice. It was stupid. And Mr. FitzGerald's failure immediately to answer any warrant that he knew was outstanding was certainly at the least [46] indiscreet as far as his professional reputation was concerned, and it could all have been settled immediately by very prompt response to the warrant. And I just do not like this way of doing things in the face of what the Court thought was a courtesy extended to non-resident counsel, particularly in view of the letter that I had written, but go ahead, sir.

Mr. Tankersley: Well, sir, I have your letter here and I have read it and I don't recall now that anything was said about having local counsel at taking of depositions and it may not have been the wisest thing to do, your Honor.

I am sure that—

The Court: I can see that it could be misconstrued, but it seems to me, at least, counsel could have said something to the Court about it.

Mr. Tankersley: I can assure your Honor that any further depositions are taken or anything that local counsel will be present and in any further proceedings in the case a local counsel will handle it.

Then outside of local counsel not being present, the taking of the deposition has been substantially in conformance with Rule 30 of the Federal Rules and there, we have filed our memorandum of points and authorities in support of this motion.

I would—I wouldn't belabor the point now. There [47] is one other point I might make, is that the objections to the taking of this deposition were filed too late and accordingly would have been waived because they were un—

The Court: What form does it take; a motion to suppress the deposition?

Mr. Tankersley: I don't know. It is a notice of a motion to—the objection is notice of a motion to be filed to strike the deposition of Burke Hammer and that was filed on March 17, 1956.

The Court: To strike it? That is the equivalent—

* * *

[53] Mr. Tankersley: Nothing, your Honor, except the [54] divorce was granted in Maryland on the grounds of adultery, and so Mr. Thomas is now the ex-husband of the plaintiff in this case.

The Court: Well, now, is he the one who was in law school and why—

Mr. Tankersley: Yes, sir.

The Court: Why was he dismissed from the law school?

Mr. Willett: If I may be permitted to answer that, the dean of the law school personally called me to tell me that a complaint had been brought against Mr. Thomas, that this matter was pending here in your Court, and I was told that either the family or someone on the part of Mrs. Thomas had suggested that he be removed from school; lot of difficulty with the school, Mr. Thomas being served in the corridor by United States Marshals, and for that reason the dean suspended him.

I have been told by the dean that Mr. Thomas has been removed from law school but it all came about as a result of the pressure that was benig applied by some unknown source, just as these letters have not been identified, but surely someone on behalf of the plaintiff or someone interested in her must be doing it.

* * *

[60] The Court: * * *

[61] I will overrule the motion to suppress the depositions of Hammer and Ponce. I have already indicated to you how I feel about that. But that, perhaps, goes beyond the question of admissibility of the depositions, and I will let them come in.

* * *

[70] The Court: Gentlemen, I want to warn you about this. There is some heat in this case and a good deal of feeling. Now I do not want any of that demonstrated in taking these depositions. The minute that there is, I am going to issue an order of protection of the witness, no matter who the witness is, and stop it and require that the evidence be taken before the Court. I hope that will not be necessary.

* * *

Discussion.

[71] Mr. Willett: Your Honor, I overlooked one matter. Counsel for the plaintiff gave notice that depositions would be taken of Beverly Kline and Mae Wooten of the Russell Stover Candy Company and I appeared on behalf of Mrs. Cassidy. It was the first motion for deposition that had been filed and those depositions have never been prepared and turned in to the Court. I have filed a memorandum with the Court. I have written also to the Notary Public. These depositions were taken in Mr. FitzGerald's office. I have requested copy and offered to pay the prevailing price for them, but they have not showed up in the file and very beneficial for the defendant's case, and I would like to have the counsel for the plaintiff state where, why they are not going to turn in those depositions.

If the Court has ruled that Ponce and Hammer's depositions and interrogatories of Cassidy are in, we want to get all the facts in this case.

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[72] The Court: Then I think you ought to notify the reporter. Was she the notary public, or he the notary public?

[73] Mr. Harrigan: I believe so.

Mr. Willett: Yes, sir; she is, your Honor.

The Court: I think you ought to notify them to provide the deposition to opposing counsel upon tender by him of the cost.

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The Court: She is probably hesitant doing it because the other side has not asked.

Mr. Willett: I think she was advised not to prepare them. That is my personal feeling. I have no [74] information.

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[1] **Stenographic Transcript of Proceedings of March 6, 1957.**

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District Court Room,
United States Post Office Building,
Alexandria, Virginia,
Wednesday, March 6, 1957.

The above-entitled cause came on for argument on motion in open court at 12:20 o'clock a. m., pursuant to notice.

Before: Honorable Albert V. Bryan, Judge.

Appearances:

Hugh R. Tankersley, Esq., 126 Poplar Street, Fairfax, Virginia, on behalf of the plaintiff.

[2] PROCEEDINGS.

The Court: Mr. Tankersley, you had something you wanted to take up?

Mr. Tankersley: Yes.

The Clerk: Next is the Civil Action No. 1245, Irene R. Thomas versus Mrs. Billie Smith Cassidy.

The Court: Mr. Tankersley.

Mr. Tankersley: If your Honor, please, I wanted to talk with you about admitting Mr. FitzGerald, my motion to that effect. I might explain that yesterday afternoon, I was having a conference with Mr. Willett who is counsel for the defendant in this case. When that meeting was over about five-thirty or six o'clock, I believe, I returned home. I was informed by my wife that the Clerk's Office here had called, said that a letter was on the way postponing the admission that we had scheduled for this morn-

ing at ten o'clock, the admission of Mr. FitzGerald, to tomorrow afternoon at two-thirty, along with setting down a hearing on a motion that we had filed to quash some subpoenas that had been issued.

This motion we had filed had been filed in the necessary five days, notice had been given of a hearing of the motion. It was to be set down on next Monday, motion Monday.

My purpose here is two-fold, one is that I would like to move Mr. FitzGerald's admission and have him admitted so that in the event this motion to quash does have to be argued, [3] that he will be able to do the argument on it. My second purpose was to ask the Court to not hold this hearing tomorrow afternoon because of the very short notice that I had on the thing and I haven't had adequate time as yet to prepare myself to argue this motion in that length of time.

The Court: It is your motion, isn't it?

The Witness: Yes, it is my motion.

The Court: You must have been familiar with it or you wouldn't have filed it.

Mr. Tankersley: Yes, sir. This motion was filed on Monday.

The Court: Your motion was filed this past Monday?

Mr. Tankersley: Right, sir.

The Court: Returnable the following Monday?

Mr. Tankersley: Right, sir, in accordance with the rules, giving five days notice and everything, this is March 6. This is, as I say, March 6, and the trial is set down for March 25. In the meantime, I have to go ahead and prepare myself on every other front for this trial that will be held on March 25.

The Court: You can't be taken by surprise, because it is your own motion.

Mr. Tankersley: That is right, sir. That is right. To have it moved from Monday to Thursday, makes it awfully inconvenient.

[4] The Court: How would it be inconvenient?

Mr. Tankersley: Well, sir, I have some other business to take care of.

The Court: That is another matter.

Mr. Tankersley: I tried to schedule my time so I would be able to argue this motion.

The Court: Here is my difficulty. The motion on its face shows it is to protect or restrain the taking of depositions that are set for March 11. Now, if I don't hear the motion until March 11, considerable difficulty arises as to the mechanics of changing the taking of the depositions. Mr. Willett brought that to my attention yesterday, told me he was going to see you. He asked me for a date earlier than the 11th. I looked at my calendar, saw I could make it tomorrow afternoon. So I told him to give you immediate, formal notice of it. But if he was going to see you, to tell you verbally. Then I immediately wrote you and to be certain of it, had my secretary call your office to tell you what was in the letter, that it was coming.

Your office replied that that was no longer your place of office, so then she called your home, gave the message there so you would be certain to get it.

Mr. Tankersley: Yes, I can appreciate that.

The Court: I have no preference as to days except by limitation. I have no other time before Monday.

[5] Mr. Tankersley: Well, sir, when I had scheduled this thing, the rule usually requires five days notice to opposing counsel. Monday was the earliest day it could be set down for trial. These subpoenas were served on Saturday, March 1, the notice was mailed that this deposition would

be taken on March 11. Immediately over the week end, was this motion to quash prepared and set down as soon as it could be, for argument. Under the rules, we were giving the opposing counsel five days notice on the thing.

The Court: When did you get notice of the depositions?

Mr. Tankersley: Notice of depositions was mailed March 1. It was sent registered mail. It was mailed March 1.

The Court: What did you have on Thursday? What do you have on Thursday, tomorrow, interfering with your appearance here?

Mr. Tankersley: I have to take care of a restaurant settlement that the people are up here, they are waiting to go to Florida. I have been holding them up two days now.

The Court: What time are you going to meet them?

Mr. Tankersley: I am to meet them in the afternoon.

The Court: Tomorrow afternoon?

Mr. Tankersley: Yes, sir. I am trying to get this thing disposed of, as they want to go back to Florida.

The Court: Now, I will tell you frankly, I just don't [6] like the way the case has been going on.

Mr. Tankersley: No, sir.

The Court: I want to go into this matter of these depositions. I can't understand why the notary in Washington refused to send those depositions over here. I want to go into that whole thing before I pass on Mr. FitzGerald's motion, before I do anything more in this case. I think that tomorrow is an appropriate time because it will not interfere with the depositions on Monday. I just don't like the way it has been conducted one bit.

Mr. Tankersley: Well, if your Honor please, the depositions have already been taken.

The Court: Yes, but they weren't filed here for a year.

Mr. Tankersley: That is right, sir. The reason they weren't filed, we explained to your Honor before, is that we found out they were of very little value for us, would cost too much. It is our option, I think, to use them, if we wanted to. If opposing counsel wanted to use them, all he had to do was to pay the cost of reproducing them.

The Court: I understood from him that he did make that effort and still couldn't get them until we had the hearing here several weeks ago.

Mr. Tankersley: Yes, sir.

The Court: Why was that?

[7] Mr. Tankersley: That I don't know, sir. That was before I came into the case.

The Court: That is what I want to look into.

Mr. Tankersley: That is the reason I want to move Mr. FitzGerald's admittance into the case. It is a long and involved case. He has been familiar with it from the beginning. There are several questions that he can answer that I am not familiar with.

The Court: For instance, in these depositions there is an intimation that Mr. FitzGerald posed as an F. B. I. Agent. There may be nothing to it, but it is in here.

Mr. Tankersley: Yes.

The Court: I think that ought to be explored before I do anything else in this case, why these depositions were withheld not sent over here, is another matter. I intend to go into that.

Mr. Tankersley: If your Honor, please, all we want to do is as far as I am concerned, to have a trial on the merits of this case. It seems to me, as you pointed out, there have been several things in this case, letters allegedly have been written, accusations, unfounded charges have been made

here which seem to be not in getting at the trial of the merits in this case, but an attack on counsel. That was the reason, if Mr. FitzGerald is admitted as counsel in this case, and any of these charges are true, then they can be dealt with. If Mr. [8] FitzGerald has been guilty of any misconduct, I am sure they could be dealt with. But as we have it now, all we have is some unfounded charges. Mr. FitzGerald is still not admitted to the case.

The Court: That is true. Under Mr. FitzGerald's own statement, he failed to answer a warrant that was outstanding in the State of Virginia, refrained from doing so for almost a year, without any knowledge to this Court there was any warrant outstanding until it happened to be brought to its attention by letter of the defendant.

Mr. Tankersley: If your Honor, please—

The Court: Even after that, it continued until the following fall. I just don't like those things.

Mr. Tankersley: Your Honor, please, since I have been in the case, I have attempted to do everything.

The Court: You certainly have.

Mr. Tankersley: I have attempted to do everything on the up and up. Just as soon as we became aware of this, or I did, we went and had this warrant looked into. There is on file, I think you have read the file, the letter from the Judge completely dismissing the charges against Mr. FitzGerald, which shows that certainly the charges must have been unfounded.

The Court: I am satisfied as to that, when you came down to see me, I told you I was ready to grant the admission.

Mr. Tankersley: Right.

[9] The Court: Now, we have this development of depositions containing the statements that Mr. FitzGerald

was posing as an F. B. I. Agent in connection with this case. I think that ought to be explained.

Mr. Tankersley: If your Honor, please, again, this seems to be an unfounded, as far as we know now, an unfounded allegation.

The Court: It may be. I don't assume for a minute it is true, but it is there. I think it ought to be clarified.

Mr. Tankersley: I agree with your Honor it should be clarified. I can't see though why Mr. FitzGerald should not be permitted to be recognized as counsel for this case, and then if these charges are true, the Court, I suggest, would be in a much better position—

The Court: I don't think any Court would grant a motion with that in its face. I think that ought to be straightened out first.

I am trying to meet your personal convenience on March 7. Why not go ahead with the deposition on March 11 and reserve your rights to strike it?

Mr. Tankersley: Well, I suppose we can do that. Again, it is a matter of inconvenience.

The Court: How would it be a matter of inconvenience?

Mr. Tankersley: This deposition is going to be taken in Russell Stover Candy Shop on the corner of "F" Street, I [10] think it is, and 15th, one of the busiest corners in the Nation's Capital, as we pointed out in our motion. We don't mind taking the depositions. If we do so, we would like to have from you an order that these depositions be taken in an orderly manner and procedure, in a place where depositions could be taken orderly.

The Court: Where do you want them taken?

Mr. Tankersley: We would like to take them in the Court Room or some place where the authority of the Court could be there to govern the proceedings.

The Court: That ought not to be necessary.

Mr. Tankersley: No, sir, it should not be. I would much prefer it that way.

The Court: Will the witnesses come here?

Mr. Tankersley: I imagine so, your Honor. We will certainly make every effort we can to get the witnesses to come here.

The Court: That was your number one objection, as to the place?

Mr. Tankersley: The place, yes.

The Court: What other?

Mr. Tankersley: The other objection we have, I hate to be arguing a motion *ex parte*, the other objection we had is that the depositions are set down for March, let's see, it is the 11th, which is only 14 days before trial. This case has [11] been pending in this Court almost a year and a half.

The Court: But he couldn't get the depositions.

Mr. Tankersley: Well, all right, then. That is right. But, if your Honor, please—

The Court: What was your other objection? The place, you didn't want them retaken didn't want them taken because it was too near trial?

Mr. Tankersley: That is right.

The Court: What other objection did you have?

Mr. Tankersley: I have forgotten my own motion, now. I don't have a copy of it here.

Going back to the time, of this late date—I have it now, your Honor—Mr. Villet was present at these depositions. He knew at that time, and heard these things alleging that Mr. FitzGerald had something to say about the F. B. I. I submit, your Honor, if at that time he knew it, if he brings it up a year later, that he has waived his right to bring it up a year later. That is the reason that it is too late.

The Court: The thing is, it affects more than Mr. Willet, though.

Mr. Tankersley: Yes, sir. Mr. Willett, now, as I understand it, again I say I hate to be arguing a motion *ex parte,* I wish Mr. Willet were here, I didn't come here today for the purposes or arguing this motion.

The Court: Why couldn't we transfer? Why couldn't [12] you by stipulation transfer the taking of the depositions to one of the rooms in this building?

Mr. Tankersley: As we pointed out in our motion, in event you do decide to allow these depositions to be taken, that I think could be done, that it be to a suitable place. As I pointed out, your Honor, I don't think these depositions should be taken at this late date. It seems to me to be drawing the attention away from the real issue in this case, that is as set forth in our bill of complaint.

The Court: What are they, discovery depositions?

Mr. Tankersley: It is not pointed out. That is another thing we don't know, whether the deposition is for discovery or for what purpose. According to the rules, the purpose for the depositions have to be pointed out, the points and authorities, Rule 30-B. This notice to take depositions doesn't designate the purpose at all for which the depositions are to be taken.

If the purpose is to establish that Mr. FitzGerald has said that he is an F. B. I. Agent, if the purpose is to say that Mr. FitzGerald has caused the notary, the court reporter, to change the depositions, then I think we are entitled to notice that that is what the purpose is. The depositions were taken in the first place merely trying to establish a fact that is to be used in this case, namely, whether one Mr. J. Harry Thomas had purchased a heart-shaped box

of candy to send to the defend- [13] ant in this case, Billie Cassidy. That is the reason that the depositions were originally taken for that purpose, for that purpose alone. That is the only thing that has anything to do with this case. If Mr. Willet intends to establish or tries to establish by the use of these depositions that Mr. FitzGerald has conducted himself improperly, that Mr. FitzGerald has had the notary, that the notary in effect has committed perjury by changing his testimony, then I submit that we are entitled to notice of that before the depositions are taken, especially at this late date.

Again, your Honor, Mr. Willet opposed the admission of Mr. FitzGerald. The only grounds he opposed it, when I made my original motion, were the grounds that were pointed out to you then. We cleared that up to your Honor's satisfaction. And now, since that is cleared up, along he comes again and poses other objections, and just a few short weeks before trial. I submit that has nothing to do with the merits of the case.

The Court: He hasn't posed any objections.

Mr. Tankersley: No, sir.

The Court: He wants to take the depositions. You are the one opposing it.

Mr. Tankersley: That is right. But as I say, he hasn't pointed out the purpose of taking these depositions. The depositions have been taken. Now they are on file with the Court.

[14] The Court: The only person that could object to the retaking of it would really be the deponents, themselves; didn't they? They are the only ones hurt by it through annoyance?

Mr. Tankersley: Again, we are hurt by it through an-

noyance and through the cost involved. It diverts me away from making a living in other ways, to appear in Washington some 16 or 17 miles from Fairfax, from my office, to be present at the taking of depositions that have already been taken.

The Court: You say it will cause you annoyance?

Mr. Tankersley: Yes, while we have this case we are trying to get ready for trial, trial on the merits of the case. Since I have been counsel, that is all I wanted to do. I realize this is complicated and an involved case. Since Mr. FitzGerald has been familiar with it from the first, he should be local counsel. He is in much better position to argue the case than I am.

The Court: I am perfectly willing to go into it before the depositions are taken. But the difficulty is, you can't get here.

Mr. Tankersley: Your Honor, I will make every effort to get here, if I can get my other business taken care of first. I owe a duty to these people. I have been stalling them off now for three days.

The Court: What time do you expect to start?

Mr. Tankersley: Pardon?

[15] The Court: What time do you expect to start?

Mr. Tankersley: My engagement is in the afternoon, about 12 o'clock. I have got to contact a lot of people, relieve these people of financial burden that they have in connection with this restaurant. It is an involved process. I have been working on it every day since the week end, every spare moment that I have had.

The Court: What days will you have open next week?

Mr. Tankersley: I will have to get my calendar.

(Counsel refers to memo book.)

Monday was the day we had this thing set down for hearing. I have got it open. I have got Friday open.

The Court: Why couldn't the depositions be postponed until Friday?

The Court: The depositions were scheduled for the 11th, Monday.

Mr. Tankersley: They are scheduled for the 11th now. Why couldn't they be postponed until March 15, on Friday?

The Court: Yes.

Mr. Tankersley: It would be all right with me, then, and have them here.

The Court: Transfer them here?

Mr. Tankersley: That is in event you should decide when this motion is argued by Mr. Willet and myself, that you should decide to grant the depositions. What I should like to [16] do is argue this motion, our motion to vacate the notice to take the depositions and motion to quash subpoenas on Monday, March 11, which is—

The Court: You can't be here tomorrow by reason of your other engagements?

Mr. Tankersley: That is right.

The Court: I will not expect you here tomorrow then. I will meet Mr. Willet and try to arrange some other day, first for the taking of the depositions. Then, secondly, for a day between now and then when you can be heard on your motion, on all of your motions.

Mr. Tankersley: That is satisfactory with me.

The Court: I will not expect you to come at all tomorrow then. With these dates of yours in mind, it may be that I can hear the motion on the 11th and put the depositions, subject to that motion, on the 15th. I understand you have both those days open.

Mr. Tankersley: Yes. I am available on both of those

days. That will be satisfactory with me, if you should allow to decide to allow the depositions to be taken.

The Court: I won't decide that until I have heard you all. I will talk with him tomorrow about us changing dates.

Mr. Tankersley: Fine.

The Court: I won't rule on it until you have had opportunity to be heard.

[17] Mr. Tankersley: Thank you.

The Court: Mr. Marshal, adjourn this Court until tomorrow morning at ten o'clock.

(Whereupon, at 1 o'clock p. m., the hearing in the above-entitled matter closed.)

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[76] **Stenographic Transcript of Proceedings of March 11, 1957.**

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March 11, 1957.

Appearances:

Edward D. Harrigan, Esq., Hugh R. Tankersley, Esq., for the plaintiff.

John R. Willett, Esq., for the defendant.

[77] PROCEEDINGS

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[78] Mr. Tankersley: Well, if your Honor please, may it please the Court, I would prefer Mr. FitzGerald arguing the motion to quash the notice, and for that purpose I would like to renew my motion to admit Mr. FitzGerald into this case.

The Court: Well, I will go into that first, if you want. Is Mrs. Goebels here, the notary? I have your letter to her.

Mr. Tankersley: Yes, sir.

The Court: Copy you sent to me asking her to be here today.

Mr. Tankersley: Yes, sir.

The Court: You have not seen her?

Mr. Tankersley: No, sir.

The Marshal: There is no response.

The Court: I do not see how I can pass on Mr. FitzGerald's motion finally until she is here, but I will hear as much of it as I can at this time. You want to make the motion and put him on the stand to make a statement in support of the motion?

Mr. Tankersley: Yes, sir.

The Court: All right. Then I will—do you expect Mrs. Goebels this afternoon?

Mr. Tankersley: I don't know, sir, whether she'll be here or not. I tried to call her. I was unable to reach her by telephone, and I wrote her a letter to be sure that [79] she would have notice that she was expected to be here this afternoon.

The Court: Well, I was hoping she would be here this afternoon so I could have her testimony either in—either here in court or in the deposition.

Mr. Tankersley: Well, if your Honor please, one thing we would like to know is why you wish her testimony.

The Court: Well, I think her testimony is very important, first, to know why the depositions were not sent over here a year ago.

Mr. FitzGerald: Oh, that I think—

The Court: The Court was told that Mr. Willett at that time asked for them and offered to pay for them and they never have come. Secondly, there is some question about the accuracy of the transcript that has been filed, and I think her testimony ought to be presented to the Court in connection with Mr. FitzGerald's admission and in connection with the trial of the merits of the case. I would like to hear her testimony before I pass on his motion, or before I go into the trial of the case, and I thought if I could get her testimony either today at this hearing, or in the form of a deposition that was scheduled to be taken on Friday; either way will suit me.

Mr. Tankersley: If your Honor will recall when we appeared here in January, on January 3, the question was asked [80] why those depositions had not been filed. Now I'd like at—at the file over the file over the week end and I think there is a very good reason for it, why they have not filed a year before. What—

The Court: What was that?

Mr. Tankersley: Well, the cost of the deposition is $54. There were forty-some pages of testimony included in the deposition. These depositions were taken on February fifteenth. On February twentieth, five days later, a motion to admit facts established, as established was filed.

Paragraph 11 of that motion to admit facts includes—

The Court: Who filed a request for admission?

Mr. Tankersley: The plaintiff, your Honor. The purpose of taking the depositions, in the first place, was to find out whether a heart-shaped box of candy had been sent to the defendant in this case, Mrs. Cassidy, by James Harry Thomas, Jr. J. Harry Thomas. That was the sole purpose of taking the deposition in the first place.

The Court: Now he was the former husband?

Mr. Tankersley: Of the plaintiff in this case.

The Court: Of the plaintiff.

Mr. Tankersley: That's right. Now those depositions were taken originally for discovery only. The witnesses live within close proximity of the Court and are readily available for trial. Five days. We discovered there [81] at the depositions that a heart-shaped box of candy had been sent. Now at that time Mr. Thomas was under order of the Court in Maryland to pay $175 per month *pendente lite* alimony to Mrs. Thomas and it was thought that instead of expending fifty-some dollars to pay for the transcription of the depositions at that time, that the purpose, the same purpose could be accomplished much more cheaply and much more effectively by the notice to admit facts.

The Court: Well, that may be so and I am sure is so if you tell me it is, but the defendant says that he could not get them sent over here.

Mr. Tankersley: Well, that is—

The Court: I want to know why that was.

Mr. Tankersley: I think that Mr. Harrigan has explained that to the Court before, and I believe he would be in a position to explain it now, if your Honor—

The Court: Any explanation you have, I will be glad to hear from you.

Mr. Tankersley: Sir, I'd like to ask Mr. Harrigan to tell you about that, because your Honor well knows I wasn't in the case at that time. I am not familiar with all the details.

The Court: Let us go ahead with the motion that you are making. I want to hear, have heard first the motion for admission. Do you want to call Mr. FitzGerald to [82] testify in support of that motion?

Mr. Tankersley: It is up to Mr. FitzGerald if he—if your Honor please, what—

Mr. FitzGerald: Testify?

Mr. Tankersley: What would be the nature of the testimony?

The Court: I want to know about what—I want to know why the depositions did not come over. I want to know what, if anything, Mr. FitzGerald had to do with them not coming over. I want to know if he knows anything about the accuracy or inaccuracy of them at the present time. All those things.

Mr. Tankersley: Well, as I understand it, your Honor, there is a different procedure for handling, if the depositions aren't accurate, the procedure for testing the accuracy or the inaccuracy of them under the rules would be a proceeding under Rule 32.

The Court: Well, that may be one. I want to go into that through the witnesses. If you do not want to do that, why, I will just put off the hearing of the motion until we can get hold of Mrs. Goebels.

Mr. Tankersley: Well—

Mr. Harrigan: If your Honor please, the plaintiff does not wish to put Mr. FitzGerald on the stand at this time because, first reason, if he takes the stand, he becomes [83] more involved as a litigant than as counsel, and the whole object of this is to make him available as counsel, and that I think would probably suffer if he did. Eventually that might become necessary, but the plaintiff opposes that now.

The Court: Well, then I will put that motion off until Mrs. Goebels is here.

Mr. Harrigan: Your Honor, I would like to make a short

statement on the delay in the depositions, because I know a little bit about that. As I mentioned on January 4—

Mr. Willett: Your Honor, I may be untimely in my objections but I do not think Mr. Harrigan is counsel in this case.

The Court: Mr. Harrigan has acted as associate counsel without any objection. I will hear what he has to say.

Mr. Harrigan: If your Honor please, the timely deposition was taken on February fifteenth of 1956. Subsequent to that the additional reason for not transcribing it was based on the authority in Odum vs. Willard Stores, in Federal Rules decision 673—

The Court: I realize you don't—party taking it does not have to have it transcribed, but what I want to know is why, when the other party wanted it, it could not be sent over.

Mr. Harrigan: Simply this, your Honor, because the [84] other party did not offer to pay for it.

The Court: Well, now there is a conflict there.

Mr. Harrigan: Well, maybe I can explain to your Honor because I will concede that the defendant offered to pay for a copy of the deposition at no time.

The Court: Well, that is in the deposition itself.

Mr. Harrigan: Yes, your Honor.

The Court: He says that he was willing to pay for the whole thing.

Mr. Harrigan: I didn't see it that way, your Honor, I have ever seen anything to that effect. And—

The Court: Well, I will ask Mr. Willett right now if that is a fact. Was there an offer to pay for this entire deposition more than a year ago?

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[85] The Court: But I am talking about a year ago.

Mr. Willett: A year ago the question never came up. I promised to pay for a copy of the transcript if she would send it to me at the prevailing price and asked to have that inserted in the record at the time on February fifteenth. The issue never arose as to would I pay for the entire amount which we have always been willing to do. And when I received the statement, I sent in the sum that had been requested, $54 I believe it was, and tendered that immediately, the same day I received notification of cost.

The Court: Now, as I understand, you question the [86] accuracy of the transcript.

* * *

[91] Mr. Willett: Yes, sir; and they had the Marshal serve Mrs. Goebels or Miss Goebels, Mrs. Wooten, Mrs. Kline, and I had that set up for today at 2:00 o'clock. Now I understand today, and I don't know it to be a fact, I haven't—but I received a telephone call from the newspaper asking me if I was aware of the fact that a $700,000 suit had been filed against me in the District Court of the United States by Mr. FitzGerald. I said I hadn't been advised and they said would you make a statement. I said no. So apparently at this time today there was supposed to have been a [92] $700,000 suit brought by Mr. FitzGerald against John R. Willett.

The Court: All right, sir.

Mr. Tankersley: May it please the Court, it seems to me that a lot of things that are completely beside the point and that are irrelevant are being brought into this. All that I wanted to do and have since I got into the case, and I might explain to your Honor just how this happened—I was retained to act as local counsel, and that was my con-

templation to act as local counsel. I find myself all of a sudden having to be the principal attorney in a long and involved case, and unless Mr. FitzGerald is admitted to argue this case, I find that I might perhaps have to do that work which is something I hadn't contemplated and which will work a hardship because of my having to give up a lot of other things and go through this complete and become completely familiar with the whole thing, but that, too, is beside the point.

If there are statements in that are incorrect in this deposition proceeding because they were incorrectly transcribed or something of that nature, we will agree to change these depositions and to strike out everything except that a heart-shaped box of candy was purchased. That is the only thing that I am interested in. That is the only thing that has any bearing on the merits of this case, as far [93] as I am concerned. The rest of this stuff about he's been accused of being a judge, or representing himself as judge, and that was incorrectly transcribed, and that representations were made linking Mr. FitzGerald with the F. B. I. in some manner or form as far as I am concerned, that is completely irrelevant. It has nothing to do in this deposition or has nothing to do with the case.

And there is another form for the trying of the truth or falsity of those things, as I understand it. It is against the law to represent yourself as an F. B. I. agent. Now if Mr. FitzGerald has done so, well, then, let him be tried for that in the proper form. All we wanted to do is to have a trial on the merits of this case.

Now if your Honor will recall when I came in here, Mr. FitzGerald had not--and moved Mr. FitzGerald admission, he hadn't been admitted because there was a criminal warrant outstanding against him here in Alexandria. Just as

soon as we left the Court, we went to look into that, and your Honor has the results of looking into that in your files, and as far as I am concerned the charges were completely unfounded.

There, again, it seems to me to be an attempt to divert the issue from whether or not Billie Cassidy alienated the affections of Irene Thomas' husband, and that is all I am interested in now. If I am going to have to try this case, I want to try the case on its merits, and I don't want to try [94] the case on a dozen different collateral fronts.

And if Mr. Willett has been sued by Mr. FitzGerald, again, that is something else. That is completely irrelevant, as far as the trying of this case is concerned.

The Court: Well, as I said before, I think the Court ought to have the testimony of Mrs. Goebels before it passes on this motion of Mr. FitzGerald, and perhaps before it goes into trial of the case on the merits.

Now to repeat, I hoped we would have her here this afternoon. If you cannot get her here this afternoon, rather than to lose time on it, I will take it up tomorrow for you. But I do want to hear her testimony because it affects the administration of justice by this Court. If the depositions taken by one side and the other side cannot have it made available, I want to know why.

Mr. Harrigan: Well, if your Honor please, under the Rules and instead of retaking depositions, if there are errors in here, there is a method of—

The Court: Aside from the errors I want to know why it was not available to both sides.

Mr. Harrigan: Well, I think that was explained to your Honor. Mr. Willett, I believe, explained himself that—

The Court: Well, I think—

Mr. Harrigan: He had offered to pay but he never sent a check until this year, until January.

Stenographic Transcript of Proceedings of March 25, 1957, Motion for Admission.

[95] The Court: Well, I think she would be in the position to explain the whole thing to us. No reason why she cannot; will only take a few minutes. But I will hear you on your other motion at this time.

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[1] **Stenographic Transcript of Proceedings of March 25, 1957.**

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March 25, 1957

Appearances:

Henry St. J. FitzGerald, Esq., Assistant United States District Attorney, for the United States.

Edward D. Harrigan, Esq., Hugh R. Tankersley, Esq., James J. Laughlin, Esq., Albert L. Ahern, Esq., for the Plaintiff.

John R. Willett, Esq., John Pratt, Esq., for the Defendant.

[2] PROCEEDINGS

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[8] Mr. Laughlin: No, I was not employed in the slightest, your Honor. Miss Goebel would call me any time of the day or night, I'd represent her. No, indeed, I would not take any composition from her—she's such a high-grade person, your Honor.

The Court: But Mr. FitzGerald had nothing to do with that?

Mr. Laughlin: Oh, no, no, your Honor; Mr. FitzGerald

knew nothing about it and later, of course, I contacted him and after Judge Holtzoff quashed it, I gave him a copy of the order so he could have it photostated, and I believe so Attorney Willett could get a copy, and I believe a copy was sent to your Honor's Clerk.

Mr. Tankersley: May it please the Court, at this time I would like to move Mr. Laughlin's admission to this case, and his associate, Mr. Albert Ahern, and I would further [9] like to move Mr. FitzGerald's admission for the purposes of this deposition today, and as I understand it, your Honor wants to go into this matter of the deposition today, and then he would consider my motion for Mr. FitzGerald's admission generally in the case, but in the event we, in taking the depositions today, I'd like to have Mr. FitzGerald able to question some of the witnesses.

The Court: No. I will admit Mr. Laughlin and Mr. Ahern as associate counsel, gentlemen have been here before.

On Mr. FitzGerald's motion for admission, that was continued until today, as I explained to you. I do not mean you particularly, but you gentlemen, when you were here before, that I thought I would want to hear Miss Goebel's testimony in connection with Mr. FitzGerald's motion for admission, and unless something changes that view during the day, why, I would adhere to that.

Mr. Tankersley: Well, sir, that is for admission generally into the case.

The Court: Well, I do not think you can specialize it any more than that.

Mr. Tankersley: All right, sir.

Mr. Willett: May it please the Court, I would like to move the admission of John Pratt, who is an attorney, to enter into this case for the purpose of association. Mr.

Pratt is the counsel for the Russell Stover Candy Company, and [10] has offices in Washington; is actually admitted before the United States Supreme Court, the District Court of Washington, and the Supreme Court of Maryland.

The Court: All right. I am glad to have you.

Mr. Laughlin: Your Honor, before we get under way, I thought I should bring something to your attention that may assist your Honor as the evidence unfolds. If, your Honor probably knows, there is a case pending in the United States District Court for the District of Columbia, Benedict FitzGerald vs. John R. Willett. On Friday last process was issued, rather, by direction of Judge Pine. The complaint was amended to add additional parties, Miss Kline and the Russell Stover Stores, and there is a count in that complaint, so I thought that I ought to tell your Honor, at the outset, that the Russell Stover and the Beverly Kline are also defendants in that case, along with Attorney Willett.

The Court: Have you filed in this suit a copy of the complaint in that case?

Mr. Laughlin: Your Honor, we will be glad to do that, if your Honor wants that done, and if I have an extra copy, I will do that at once. If not, I will afford—may I inquire whether I have an extra copy in the file.

Mr. Tankersley: I have one.

Mr. Ahern: I have one, your Honor.

The Court: Can you spare it?

[11] Mr. Ahern: Yes.

Mr. Laughlin: While it is not certified, your Honor, I will give you my assurance that that is identical with what is on file in the District Court.

The Court: I may not need to put it in the file. You

have referred to it. I want to read it, and perhaps I can return it to you without putting it into the file.

Mr. Laughlin: That is all right.

Your Honor, this is an identical copy that on the margin of the original it appears the fiat of Judge Pine permitting the amendment to be filed.

The Court: What did you call it? A fiat?

Mr. Laughlin: Yes. In other words, I think that is the term they use. I have never understood. We never heard that term in law school, your Honor, but they use it over there and I suppose it is all right. They have been doing it for a long time.

(Handed to the Clerk.)

Mr. Willett: May it please the Court, inasmuch as the statement has been made pertaining to the suit against, or the parties against Russell Stover Candy Company and Mrs. Kline, I think the Court should also be aware of a letter that was signed by James J. Laughlin and addressed to Mr. K. C. Jones, who is the attorney for the Russell Stover Candy Company, and I would like to have the Court look that over [12] along with the complaint.

Mr. Laughlin: Your Honor, I would have no objection. I know your Honor is trying to read this.

The Court: Are you familiar with it?

Mr. Laughlin: Oh, I have no objection. Your Honor, so that you won't have to interrupt again, while you're reading it, and I believe this would be appropriate—I would like to pass up to you also, your Honor, an order signed on Saturday in the case, the case in the District of Columbia, Benedict FitzGerald vs. John R. Willett, where Judge McGuire directed that process be appointed to serve Attorney Willett.

Now I might say before I presented this order, your

Honor, I called Attorney Willett on Friday afternoon because the Marshal said they'd been unable to serve it, and I told him, I said, it is not my desire to embarrass you before the judges of the District Court, before Judge Bryan, and with that he hung up on me.

So in view of that, your Honor, there was no choice but to go to Judge McGuire and Judge McGuire, since he was evading service, and I'd like to pass that up to you, an order signed on Saturday.

The Court: Call your first witness, Mr. Willett.

Mr. Willett: Mrs. Kline, would you please come forward.

Mr. Laughlin: Your Honor, may I request a rule on [13] witnesses?

* * *

BEVERLY M. KLINE was called as a witness by counsel on behalf of the defendant and, having been first duly sworn, was examined and testified as follows:

[19] By Mr. Willett:

Q. Now did there ever come a time that on February 9, 1956, that any person came into the store in connection with this purchase Mr. Thomas had made? A. Yes. Within several hours, I would say two hours, Mr. Harrigan came in the store and served me with a subpoena.

* * *

[30] Q. Did you hear Mr. FitzGerald make a statement that this is a small room and the air is congested? A. No.

* * *

[33] Q. Now did you hear Mr. FitzGerald make the statement and I quote.

"Are we ready yet? Do you have anything else to say? I will give you my copy of the notice. Please mark this notice Plaintiff's Exhibit numbered 1 for identification."

And did you hear Mr. Willett say:

"No, I don't want yours. I have one here [34] somewhere"?

A. No, I did not.

Q. Now I invite your attention to page 7 of these depositions, and I ask you to state if at this point the notary public said:

"Will you please stand. Now raise your right hand and answer after me. You solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, so help you God, in the proceeding that we are about to hold?"

Did you hear her say that?

A. Yes.

Q. Now did she say it at this time? A. Well, that was—

Mr. Laughlin: Your Honor, I think the question should be clarified at this time. I don't know what time he would be referring to.

By Mr. Willett:

Q. Was this statement made by the notary at this particular point in the proceeding, or was this statement made at the outset, if you know? A. It was made at the outset.

Q. Then the notary public did not ask the question at this particular point? A. No, she did not.

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[49] Q. Now again inviting your attention to page 15, I ask you if Mr. FitzGerald raised this question:

"Now tell us what took place at this interesting little meeting that was scheduled immediately before this deposition proceeding unknown to the rest of us."

The answer is broken off where they have spelled w-e-l—

Do you recall that question being asked of you?

A. No.

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[50] Q. Now I invite your attention to page 16 and the statement reported to have been made by Mr. FitzGerald, and ask if this statement were made:

"Perhaps you would like to move your chair, Mr. Willett, away from the draft."

Did you hear anyone make that statement?

A. No, I didn't.

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[52] Q. Now I invite your attention to page 18 and I ask you if you heard at the time this particular point of the deposition a statement by Mr. Willett,

"And you have a machine going too—that's illegal. Make a note of that—and the stenographer is your secretary—note that, too. I object to her taking this down."

Did you hear that statement?

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[90] EXAMINATION IN BEHALF OF THE PLAINTIFF.

By Mr. Laughlin:

Q. You state your name is Beverly Kline? A. That's right.

Q. Is that your real name? A. Yes, sir; that is my name.

Q. Are you married, Miss Kline? A. No, I am not.

Q. What is that? A. No, I am not.

Q. Well, but have you ever been married? A. No, I haven't been.

Q. Then do you know a Milton Kline?

Mr. Willett: Your Honor, I am going to object to that and ask the purpose of such a question on cross examination.

The Court: I will let him go ahead at this time. I take it you have some—

Mr. Laughlin: Yes, your Honor, it goes to the credibility also.

By Mr. Laughlin:

Q. Do you know a Milton Kline? A. Yes, I do.

Q. As a matter of fact, your name is Rebis, isn't it, R-e-b-i-s, and not Kline? [91] A. My name is Beverly Rebis Kline.

Q. Well, what—in other words, you were born Beverly Kline; is that right? A. No.

Q. Well, what was your name when you were born? You say you are single. What was your name when you were born? A. Beverly Rebis.

Q. Beverly what? A. Beverly Rebis.

Q. All right. Now when did you take the name Kline? A. I chose to use the name Kline.

Q. What's that? A. I chose to use the name Kline.

Q. When did you begin to use the name Kline? A. In 1949.

Q. And why did you select that name?

Mr. Willett: Again, I am going to note an objection. I don't think this is pertaining to the evidence revealed on direct examination. It seems to be an attempt to go--

The Court: The way I understand the testimony, it is being taken and Mr. Laughlin is cross examining both in respect to the deposition and the motion for admission.

Mr. Laughlin: Yes, your Honor.

[92] The Court: I will let it in.

By Mr. Laughlin:

Q. How did you happen to begin to use the name Kline in 1949? A. I chose to use that name because it, for many purposes, as far as I was concerned, it was it.

Q. Isn't it a fact, Miss, because you were having a meretricious relationship with one Milton Kline; isn't that a fact? A. Yes, it is.

Q. And he was a married man, wasn't he? A. That's right.

Q. What's that? A. That's right.

Q. And you were carrying on with him and you were having relations with him regularly, weren't you? A. I think that there is some limit to that question as to the way I would answer it.

Q. Well, do you want to explain your answer? You can do it in your own words, Miss. Yes, if his Honor is willing. Certainly.

The Court: You just answer it in your own words.

The Witness: I chose to use the name of Kline in order to give a certain amount of [93] protection to the fact that I had a daughter who was born out of wedlock, if that is what you are trying to establish. In fact, I think you have evidence of that. You have the signed affidavit to that effect, haven't you?

By Mr. Laughlin:

Q. Well, how did you find that out, Miss, that I have an affidavit to that effect? How did you find that out? A. I didn't use the tactics that you people used.

Q. What is that? A. I didn't use the underhand methods that you people use. I got this information from Mr. Kline himself.

Q. In other words, you got the information from Mr. Kline himself? A. That's right.

Q. All right. Now, then, just this question and we will not pursue it, Miss.

You had a child by Milton Kline; Milton Kline then was married and had children of his own; isn't that right? A. Yes. That is true.

Q. Now, Miss, you have testified here today about a deposition February 15, 1956. You were asked certain questions by Mr. Willett this morning. Is your memory good as to what took place in that at that deposition that time that you can testify irrespective of any written documents? What [94] I mean, do you have an independent recollection of everything that took place during that deposition? A. My memory is average and I would say that when I read that deposition it was so contrary to anything that was said that I am afraid there was no likeness there at all.

Q. Well, now, Miss, let me ask you this, before you testified here this morning, you had talked with Attorney Willett, had you not? A. Oh, yes, sir; I have.

Q. Now tell me this. You talked to him this morning? A. No, I hadn't see Mr. Willett before we arrived here this morning.

Q. Now before today when was the last time that you had seen Mr. Willett? A. I saw Mr. Willett just a few days ago, Mr. Pratt and Miss Wooten and myself were—

Q. You say that you saw him a few days ago? A. That's right.

The Court: Just a minute. Your answer just before that last one, the reporter did not get fully about talking to Mr. Pratt and Mr. Willett.

The Witness: Mr. Pratt and Miss Wooten and myself have seen Mr. Willett.

The Court: Wait a minute. Wait a minute.

The Witness: Have seen Mr. Willett several [95] days ago. I believe it was—let's see—today is Monday. I believe it was Thursday.

By Mr. Laughlin:

Q. Now was it Monday or was it Thursday? A. I said today is Monday.

Q. I know today is Monday. A. That's right.

Q. You saw them last Thursday; is that right? A. Yes, sir; it is.

Q. You had not seen, you had not talked, then, with Mr. Willett between Thursday and this morning; is that right? A. No, I haven't.

Q. All right.

Now, then, when you saw him Thursday, where did that meeting take place? A. In Mr. Willett's office.

Q. Who else was there other than the parties you have mentioned? Was anyone else there? A. One of Mr. Willett's associates was there during part of the time that we were speaking with Mr. Willett.

Q. Now will you tell us how you happened to go there last Thursday? A. By an arrangement with Mr. Pratt.

Q. In other words, Mr. Pratt, this gentleman here? A. That is right.

[96] Q. Told you to go there; is that right? A. Yes.

Q. Now at that time was a deposition, a copy of a deposition either shown to you or read to you? A. Mr. Pratt had a copy of it.

Q. Something like what I have in my hand? A. That's right.

Q. And then tell me, how much time did you spend in Mr. Willett's office last Thursday? A. We were there several hours.

Q. All right. Now you got there about what time? A. Oh, I would imagine it was about ten, and in fact, it wasn't two hours. We got there at ten o'clock and we were back in Washington by quarter after twelve, so we weren't there quite two hours.

Q. All right. You got there at ten. You were back in Washington after a quarter after twelve. Now can you tell me this, Miss Witness, was every page of this deposition gone into? A. I had read the deposition and we went over what was in the deposition, and I think we all agreed that it wasn't anything like what had taken place.

Q. All right. Now, then, last Thursday, you mean to say Mr. Pratt had the deposition? A. That's right.

[97] Q. With him.

Now, there's Thursday. Now confine yourself to that alone. Was the deposition taken up page-by-page? A. No.

Q. Well, who did the questioning, Mr. Pratt or Mr. Willett? A. Mr. Willett asked questions, and Mr. Pratt, I think it was generally discussion.

Q. All right. Now having in mind last Thursday, March the twenty-first, I believe, March, last Thursday, you had seen the deposition before that time, hadn't you? A. Oh, yes.

Q. All right. Now when was the first time that you saw the deposition? A. The exact date I cannot recall but it was several weeks ago when I first read the deposition. I can't recall the exact date.

Q. Several weeks ago for the first time? A. That's right.

Q. All right. Now we'll come back to that.

Now having this in mind, last Thursday, when was the time before last Thursday that you had seen Mr. Willett? A. Well, last time I saw Mr. Willett was when we came out of Mr. FitzGerald's office over a year ago.

Q. At the time of the deposition? [98] A. That's right.

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By Mr. Laughlin:

Q. All right. Miss Witness, did anyone besides Mr. Willett ever propound any questions to you with respect to this deposition before last Thursday? A. No.

Q. All right.

Now, Miss, based on your questions here, your answers this morning you say that virtually nothing is correct in this deposition. It is practically all wrong; isn't that right? A. Yes that is what I would say.

[99] Q. It is almost all false, would you say? A. Yes, I would go so far as to say.

Q. Now you have told us that you have an independent recollection of what took place at that deposition, February fifteenth, of '56. Were you at that time employed at the Russell Stover Candy Store; is that right? A. Yes.

Q. And that is right across from the Press Building? A. That's right.

Q. Had you ever been in the Press Building before? A. No.

Q. All right.

Now then you remember going to Mr. FitzGerald's office? A. Oh, yes, I—

Q. For this deposition. You remember that? A. Very well.

Q. All right. Now tell me, then, what questions were asked you at that deposition and what answers did you make?

Mr. Willett: Your Honor, I think that is a very general question. Does he mean everything that was said? Does he want every question and every answer given? I think the question is much too broad.

Mr. Laughlin: Your Honor, she's said that [100] this is almost, this didn't happen, virtually her words. That this is false. Now I want to know what was she asked and what answers did she make and I was going to follow that up with individual—

The Court: You mean the questions.

Mr. Laughlin: As much as she can recollect in substance anyway.

The Court: That is asking for an awful lot.

Mr. Laughlin: Well, all right, then.

By Mr. Laughlin:

Q. All right. Now, Miss Witness, you have told us that you had seen Mr. Willett before the deposition. That is your testimony, isn't it? A. Yes.

Q. And that the Willard Hotel— A. That's right.

Q. Now at that time did you know Mr. Thomas? A. No, I didn't know Mr. Thomas. I recognized Mr. Thomas, my attention having been called to him by Mr. FitzGerald. Of course, when I went into the Willard Hotel, I recognized Mr. Thomas.

Q. In other words, you recognized Mr. Thomas when you saw him in the Willard Hotel? A. That's right.

Q. Before the deposition; is that right? [101] A. That's right.

Q. Now have you seen Mr. Thomas recently? A. No. Today is the first time.

Q. You talked with him this morning? A. I spoke to him. Yes; sir. I said, "Good morning."

Q. Also you recall, Miss, that a morning recess around about eleven or eleven-thirty, when you were still under examination, you recall that you were talking with him out in the, when he was on the bench outside?

Mr. Willett: Your Honor, I am going to object to that and ask if he is trying to infer that this witness passed on any information, that she revealed here. I would like to know the purposes of his making reference—

The Court: I missed that question, Mr. Laughlin.

Mr. Laughlin: Your Honor, the question I put to her, I asked her this, that during a morning recess, not the luncheon recess—

The Court: Today?

Mr. Laughlin: Yes, about eleven or eleven-thirty, if she did not converse with Mr. Thomas during the recess.

The Court: Mr. Thomas?

Mr. Laughlin: Yes, who is waiting to [102] testify.

The Court: All right. Go ahead.

By Mr. Laughlin:

Q. That is true? A. Yes, I spoke a few words to him.

Q. What's that? All right.

Now, Miss Witness, then, you were at the Willard Hotel. How did you happen to be at the Willard Hotel on that day? A. Through an arrangement made by Miss Wooten and Mr. Willett.

Q. Well, now, when you appeared for the deposition, you appeared as a result of some paper given to you, didn't you? How did you happen to come, now, or know—withdraw that.

When did you know that you were supposed to give a deposition in the National Press Building on February fifteenth? When did you first know that? A. Oh, I was subpoenaed the very evening that Mr. Thomas came into the store, within two hours' time.

Q. All right. Now that date is what, Miss? A. That date would be February the ninth.

Q. All right. And you knew where to go? A. Yes.

Q. Now did you yourself get word to Mr. Willett? [103] A. No.

Q. Now at that time did you know what the lawsuit was about? A. No. At that time I did not.

Q. You say you did not. That it was Thomas vs. Cassidy? A. You mean on the evening of February the ninth? Is that what you are referring to?

Q. In other words, you were going to give a deposition, you say, you got a subpoena? A. That's right.

Q. It had a name on it, didn't it? A. Yes.

Q. You know what it had on it? A. Yes, it had Mrs. J. Harry Thomas vs. Mrs. Billie Cassidy.

Q. Now at that time did you know what the lawsuit was about? A. No, I could only imagine a few guesses.

Q. Now what I want to know, after you got that, did you get any, did you communicate with Mr. Willett? A. No.

Q. To your knowledge did Miss Wooten communicate with Mr. Willett? A. The communication with Mr. Willett was made by [104] Mr. Rogers, who is a lawyer for Russell Stover Candies. He was first contacted.

Q. Well, now— A. And Mr. Rogers—

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[105] Q. All right. Now are you able to tell me this, why was contact made with Mr. Willett and not with Mr. FitzGerald? A. I believe the contact was made in view of the fact that Mr. Thomas was a Stover customer, and since the order had been made by Mr. Thomas, that they were interested, Stover was interested in protecting their customer first. That was their first concern.

Q. In other words, what you mean by that, the Stover Candy Company wanted to protect Mr. Thomas: is that right, as a customer? A. I would say that they were giving him the first consideration.

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[106] Q. Now, then, how did you know then, Miss, to be in the Willard Hotel on February fifteenth at a precise time? How did you know to be there at that time? A. The arrangements were made by Miss Wooten.

Q. And you had nothing to do with those arrangements? A. No, I didn't object to them.

Q. You what? A. I didn't object to them.

Q. You did not object. Anyway, then, that you came to the Willard Hotel, and what was the hour to be? A. Quarter of three.

Q. What's that? A. At quarter of three.

[107] Q. Quarter of three? A. That's right.

Q. And in the lobby? A. In the lobby; yes.

Q. And had you been there before? A. No, I had never been in the Willard Hotel lobby before.

Q. Now up until that time, did you know Mr. Willett? A. I had never seen Mr. Willett.

Q. Had you ever seen him? A. I had never seen Mr. Willett.

Q. But you knew Mr. Thomas; is that right? A. I recognized Mr. Thomas.

Q. All right. Now, then, tell me this, since your memory is good as to February of '56, how was Mr. Willett dressed that time? A. I wouldn't recall, wouldn't have the slightest idea.

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[108] Q. All right. Now tell us, then, how you met. Tell us what introductions were in the Willard Hotel. A. Mr. Thomas was waiting for us in the Willard Hotel. [109] Miss Wooten didn't know Mr. Thomas, and so I recognized him and introduced them, and then Mr. Willett arrived in just a few minutes and Mr. Thomas made the introductions.

Q. Now is he, if I understand this correctly, Miss Witness, you yourself recognized Mr. Thomas; is that right? A. Yes.

Q. And you had seen him just once before? A. Yes, but the F. B. I. made such an impression on me, I'd have known him most anywhere.

Q. We're going to come to that in a minute, Miss.

Incidently, Miss, has anyone suggested to you that as you are being examined to constantly refer to the F. B. I.? Has anyone suggested that to you? A. No, but that's, stuck in my mind.

Q. What's that? A. No, nobody to remind me of it. I have had several F. B. I. agents to visit me at work concerning this.

Q. All right. Now we're going to come back to that, Miss.

But on this occasion you recognized Mr. Thomas and you had only seen him once before; is that right? A. That's right.

Q. As a customer in your store? A. Yes.

Q. All right. Now tell me this. On February 15, how [110] many hours did you work at that store? A. On February 15?

Q. Of '56 now. A. That was one of my eight-hour days.

Q. Do you know what day of the week it was? A. No, I don't recall what day of the week it was, but I had to go to work there in the morning and at quarter of three in the morning Miss Wooten and I went across the street to the Willard Hotel.

Q. Well, now, Miss, you have testified in considerable detail this morning about what took place on the fifteenth at the deposition, and you don't know what day of the week it was? A. I would say it was Tuesday.

Q. On a Tuesday?

All right, and are you quite sure of that? A. No, I am not.

Q. All right. As a matter of fact, it was a Wednesday, wasn't it?

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[112] Q. All right.

Now, Miss Witness, then we are back at the Willard Hotel. You knew Mr. Thomas, the reason you have already stated. Thomas then came to you and you introduced Miss Wooten; is that right? A. That's right.

Q. Then later on Mr. Willett came; is that right? A. Yes.

Q. Now did you know him before? A. No, never seen Mr. Wooten before.

Q. Had you ever heard the name before? A. I had never, never heard of Mr. Willett. I beg your pardon. I had heard of the name since Miss Wooten had mentioned that Mr. Rogers had contacted Mr. Willett, and so I had heard the name, but I had never seen Mr. Thomas, Mr. Willett, rather. Never seen Mr. Willett.

[113] Q. All right. Now when Mr. Willett came, how was the introduction made and by whom? A. The introduction was made by Mr. Thomas.

Q. What was said? A. Mr. Willett was introduced as Mr. Willett.

Q. Now did you understand that Mr. Willett was the attorney at that time for Mr. Thomas? A. Yes, I understood that he was Mr. Thomas' attorney.

Q. Now tell me this, then. Since you were absorbing all of that, Miss, was it your understanding that Mr. Thomas was connected with a lawsuit? A. Well, as I understood it, this was an alienation of affections suit. Mrs. Thomas vs. Mrs. Cassidy.

Q. When did you first know that? A. Well, after the, I had received the subpoena, and Mrs. Wooten had contacted Mr. Rogers. That was the information Mr. Rogers gave us.

Q. And—all right. Now, the question—did you understand that Mr. Thomas was a party to the lawsuit where you were going to give the deposition? A. I didn't know that Mr. Thomas—well, I didn't know how or, not knowing anything about law, did not know how Mr. Thomas would be connected. I, in fact, I didn't know until that day that Mr. Thomas would be there.

Q. Well, now, Miss, Mr. Thomas did introduce Mr. [114] Willett and introduced him as his lawyer; isn't that right? A. Yes.

Q. All right. Now, Miss, you said that you did not know that Mr. Thomas, you weren't sure even Mr. Thomas was going to be there; was that— A. That's right.

Q. Then did you not know Willett, if Mr. Thomas wasn't going to be there, how were you going to connect with Willett? A. I don't get your line of reasoning there.

Q. Well, Miss— A. Maybe if you can phrase your question a little differently.

Q. You said you did not know Mr. Willett. A. No.

Q. All right. And as far as you knew Miss Wooten didn't know Mr. Willett? A. That's right.

Q. All right. And you were not sure that Mr. Thomas was going to be there? Is that your testimony? A. Not until that day: no. I didn't. I didn't know until it was disclosed to me that we were going to see Mr. Thomas and Mr. Willett. I didn't know whether Mr. Thomas would be at the taking of the deposition or not.

Q. Well, Miss, tell me this: Who were you supposed to see at the Willard Hotel? Who were you and Miss Willett— [115] Miss Wooten supposed to see at the Willard Hotel? A. I was supposed to see Mr. Thomas and Mr. Willett.

Q. But just a moment ago you said you weren't sure that Mr. Thomas was going to be there. A. It seems to me that the time is concerned here and when the arrangements were made to see Mr. Thomas and Mr. Willett, they were not made several weeks ahead. I didn't really know anything about it until that day that I was going to see Mr. Willett and Mr. Thomas. The depositions I knew before, of course, since the ninth of February.

Q. Well, Miss, let's put it this way, then. The deposition on February fifteenth of '56, was to be at what hour? A. Three o'clock.

Q. All right. And what time did you leave the store, the Russell Stover Candy Store, to go to the Willard Hotel? A. I would say about twenty minutes of three.

Q. All right. Now at that time did you know that Thomas was going to be there? A. At that time I did; yes.

Q. And how did you know that at that time? A. Miss Wooten informed me that she had made those arrangements.

Q. With whom, did she tell you? A. With Mr. Willett.

[116] Q. And when did she tell you that? A. I knew that morning that we were going to meet them.

Q. All right. Now then, Miss, when you were in the Willard Hotel, that was right in the main lobby, wasn't it? A. That's right.

Q. You know where Peacock Alley is, the Willard Hotel lobby? A. I am not that familiar with the Willard.

Q. Well, in the lobby there is a great big clock, a grandfather's clock, and there is chairs all around the lobby; isn't that right? A. In the lobby of the Willard Hotel? There are chairs in the lobby. Yes. I don't recall a clock.

Q. All right. Now, and how long would you say you remained with Attorney Willett? A. I think I have told you before about fifteen minutes.

Q. And you were seated, were you not? A. Oh, yes.

Q. Now is it your testimony that nothing was said about that he was a judge? A. That is right. I did not know Mr. Willett was a judge.

Q. What's that? [117] A. I did not know Mr. Willett was a judge.

Q. All right. Well, now, the question is this, was there anything said at that meeting in the Willard Hotel lobby about Mr. Willard being a judge? A. Not a thing.

Q. What's that? A. Not one word was mentioned.

Q. All right. Now, when were you first asked that question by anyone connected with this case? A. I was never asked that question until we had gotten in here today. Mr. Willett asked me if anyone ever referred to him as a judge.

Q. Miss, do I understand before this morning and Mr. Willett interrogated you this morning, do I understand before this morning, Mr. Willett or no one else asked you whether he was represented as a judge? A. No. No one has asked me that question.

Q. And when that was asked you this morning, that was the first time it was put to you; is that right? A. In the form of a question; yes.

Q. And you are positive of that? A. I knew Mr. Willett was a judge. I have learned recently that he was a judge, but I have never been questioned about it.

Q. Well, tell me this, when did you first find out he [118] was a judge or part-time judge, however he is? A. I think during the course of the conversations that Miss Wooten and I have had, well, since all this, the deposition was sent to the store, and so forth, during our discussion, it has been mentioned that Mr. Willett was a judge.

Q. Now, Miss, let me ask you this. Was there anything said on December, I mean February fifteenth of '56 either at the Willard Hotel or Press Building or anywhere else on that day as to Mr. Willett being a judge or part-time judge? A. No.

Q. All right. Now, then, having that date in mind, when was the first time after that that you found out that he was a judge? A. Oh, I'd say it has been within the last, oh, several months that I have found out that Mr. Willett was a judge.

Q. Well, now this is March the twenty-fifth. When, what month? A. I could not say the day nor the time nor the hour.

Q. Well—Miss, you remember well things that happened February fifteenth of '56, and you can't tell us now when it was that you first found out that Mr. Willett was a judge? A. Yes. You always remember things that leave a startling impression on your mind. The fact that Mr. Willett [119] was a judge was really of little concern to me.

Q. That made an impression? A. I said it was of little concern to me. It did not make an impression.

* * *

Q. All right. Now then, Miss, you have told us that when Mr. FitzGerald came to the Candy Store, Russell Stover Candy Store, he said he was an agent of the F. B. I.? A. He said, "I am with the F. B. I."

Q. All right. Now tell me this. I want to get all of [120] that. Up to the time that he came there on that day, was he previously known to you? A. No, I had never seen Mr. FitzGerald.

Q. How long, having in mind February 15, of '56, how long had you worked at the Russell Stover? A. About two and a half years.

Q. And you have said yourself it is a very busy store, and if a customer came in there on several occasions, you probably would remember that, would you not? A. Oh, yes.

Q. And it is your testimony that you never saw Mr. FitzGerald in that store before? A. That's right.

Q. All right. Now the date that Mr. Thomas bought this candy—

Your Honor, may I have an identifying mark placed on this?

Mr. Willett: May I ask the purpose of having an identifying mark on this box of candy?

The Court: Is that the original box?

Mr. Laughlin: It is a similar box.

Mr. Willett: Then I object, your Honor.

The Court: What do you want to put it in evidence—

Mr. Laughlin: I was going—it may well [121] be that it is not admissible. I want to show it was this type of box he bought. It may well be. If it is not the original, it would not be admissible.

The Court: Well, I just do not want to clutter up the record with a box as big as that. Ask her if it was similar to the box, and then you describe the box on the record.

Mr. Laughlin: Yes. All right.

By Mr. Laughlin:

Q. Miss Witness, the box that Captain Thomas bought for Miss Cassidy, was it similar to this? A. Yes.

Q. All right.

Mr. Laughlin: And, your Honor, for the record I would describe that as a heart-shaped, shows a young man shaking hands with a young lady, a heart-shaped box of candy, and on the heart is Russell Stover Candies.

By Mr. Laughlin:

Q. Now you may want to see it.

Mr. Willett: Give it to my opponent here.

Mr. Laughlin: Now then the date, the date that was bought again, Miss?

The Witness: On February the ninth.

[122] By Mr. Laughlin:

Q. Now that is the type of candy that you have only on sale just before Valentine's Day, isn't it? A. Yes, the box is the type that is used at that time.

Q. All right. Now, then, tell me, then, when Mr. FitzGerald came in the store that day, what was the first thing he said to you and what did you say to him? A. He said, "I am with the F. B. I. We are after that man." And he pointed that man as Mr. Thomas flew out the door.

Q. And Mr. Thomas was in the store; is that right? A. No, Mr. Thomas had just made his exit and Mr. FitzGerald pointed in that direction.

Q. Now as I understand there is only one exit? A. That's right.

Q. F Street. You have to go in F Street, out of F Street? A. Oh, yes.

Q. Now you're sure he said it in just that fashion? A. Yes, I would.

Q. Now let me ask you this—

The Court: Mr. Laughlin, I do not think she finished. I understood you to say Yes, I would.

The Witness: There would be no question in my mind as to the statement he made to me.

[123] By Mr. Laughlin:

Q. He said it in just the manner that you have said, that you have related, "I am with the F. B. I."? A. Yes.

Q. Now, Miss, isn't it a fact that he said to you, I have been to the F. B. I. with regard to that man—

Just look at me. You don't have to look at Mr. Willett. A. Oh, I am not looking at Mr. Willett.

Q. I have been to the F. B. I. with regard to that man and the F. B. I. are checking as to his transporting Miss Cassidy beyond state lines? A. Mr. Thomas, rather, Mr. FitzGerald never made any such statement to me.

Q. All right. Now let me ask you this: Did he mention an F. B. I. agent named William Welch? A. No, he made no mention of William Welch.

Q. All right. Now let me ask you this.

Did he say anything about Thomas taking a woman beyond state lines? A. No, he did not.

Q. All right. Did he say this to you: We want to find out where he is getting the money to spend on this woman when he should give it to his wife and his child? A. No, he didn't mention that.

[124] Q. Nothing like that was said? A. No.

Q. Now, Miss, let me ask you this: You are of the Russell Stover Candy Store for some time, you work also at the Greyhound Bus Terminal, I believe? A. That's right

Q. What other types of employment have you had? A. Well, previous to my employment with the Greyhound Bus Company, there was a period of three years during which time I did not work. I stayed home and cared for my daughter. I was fortunate enough to be able to do that. And prior to that time I had worked as a medical technician for Dr. Richard Kelso here in Washington.

Q. Now, Miss, in your work from time to time, you have been thrown in contact with government agents, haven't you? A. That was the first time I had ever been approached by a government agent.

Q. And at no time have you ever been approached by a government agent; is that your response? A. At no time.

Q. How is that? A. At no time.

Q. All right, now, Miss; in this case you later talked to the F. B. I.; did you sign a statement? A. No.

[125] Q. In connection with your charge that Mr. FitzGerald impersonate an agent of the F. B. I., do I understand you did not sign a statement for the F. B. I.?

Mr. Pratt: If the Court please, I think counsel is trying to put words in the witness' mouth when he refers to an alleged charge that this gentleman impersonated an F. B. I. She's merely stating the facts. She made a statement. Mr. Laughlin, why not refer to it as a statement?

Mr. Laughlin: Your Honor, the point is this. She's apparently accused Mr. FitzGerald of impersonating an agent of the F. B. I. and the F. B. I.—

The Court: Well, what is your question now?

Mr. Laughlin: The question, as a matter of fact, in view of the objection, your Honor, I lost sight of it. May I have it repeated, please.

The Court: What is it you want to know?

Mr. Laughlin: I have—I have really forgotten, your Honor.

Here is what it is. I will save Miss Reporter—

The question I put to her is this, your [126] Honor; she said she was interviewed by an agent or agents of the F. B. I. My question is then, Did you sign a statement for the F. B. I. or an agent of the F. B. I.?

The Court: Now what is your objection, Mr. Pratt?

Mr. Pratt: Counsel used the statement charging Mr. FitzGerald with impersonating an F. B. I. agent. There is nothing of that in this case as far as we are concerned. She merely made a statement as to what Mr. FitzGerald said to her, and I think that what Mr. Laughlin said is a conclusion. He can make his own conclusion, but he cannot put them in the mouth of the witness.

The Court: You want the question limited to the statement and what the statement showed?

Mr. Pratt: That is right.

The Court: Ask about the statement without any characterization of it.

Mr. Laughlin: Miss, let me ask you this. Did you sign a statement for the F. B. I.?

The Witness: No, I didn't. No, I didn't.

By Mr. Laughlin:

Q. All right. All right. Now, when Mr. FitzGerald [127] came in, he didn't exhibit any credentials, did he? A. No.

Q. And he gave you, or left with you his own business card; isn't that right? A. He left a card: yes.

Q. And it was just like what I have in my hand, wasn't it? Will you look at it, Miss. Wait a minute. Wait a minute. I think unless that is the original card that they purport to have—Mr. FitzGerald was supposed to have presented.

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The Court: Well, the card attached to the deposition filed with the Court as Exhibit 4 [128] reads "Benedict F. FitzGerald, Jr., Counsel at law, National Press Building, Washington 4, D. C. Sterling 3-2057."

Mr. Willett: That is what this card says, your Honor.

Mr. Laughlin: And you'd say it was a card just like this?

The Witness: Yes. After Mr. FitzGerald went out and he, after all, didn't give me much time to look at the card. He was so excited and in such a hurry to get across to me what he, whatever he was trying to get across, or get the information out of me he wanted, that when he handed me the card and walked out of the door, after a few minutes I looked at the card, and as you say, you asked me if I had ever been approached by an F. B. I. agent. No, I hadn't been. But he so impressed me, that there was a question in my mind as to his actions; they seemed unlikely that an F. B. I. agent would be so excited and go to such extremes as he had, but I took the liberty of checking with them. I was under the impression he was with the F. B. I., just as he had said to me.

By Mr. Laughlin:

[129] Q. Are you finished? A. Yes.

Q. All right.

Then he, the card was just like this? A. Yes.

Q. And it doesn't say anything on this card about the F. B. I., does it? A. No.

Q. All right, Miss.

Miss, you say that you then reported to the F. B. I., or called them; is that right? A. I asked him.

Q. When did you do that? A. The next morning.

Q. February— A. Tenth.

Q. Sixteenth? A. No.

Q. The next morning? A. That's right. February the tenth.

Q. Oh, I mean. Tenth. Candy was bought on the ninth. A. That's right.

Q. All right. And it was the tenth then that you reported it to the F. B. I.? [130] A. I called the F. B. I.

Q. Now, tell me this. What number did you call? A. Oh, I wouldn't recall.

Q. Well, you said earlier, that Mr. FitzGerald, making the statement, "I am with the F. B. I." made an impression on you, didn't it? A. Very definitely.

Q. Because that had never been done before; is that right? You had never had that situation before; is that right? A. I had never been approached by an F. B. I. agent before.

Q. Therefore, it made an impression on you; didn't it? A. Very definitely.

Q. Then you don't know who you called? A. I called the F. B. I. I have sense enough to know how to contact the F. B. I.

Q. What number did you call? A. I don't recall. Do you know their number?

Q. Miss, I am asking you what number did you call? A. I can't recall the number.

Q. What time of the day, or night did you call? A. I called in the morning. It must have been about ten o'clock in the morning, I guess.

Q. Who did you talk to? [131] A. I talked with a member of the F. B. I. I don't recall his name.

Q. Well, you didn't think it important to find his name? A. No, I was told his name, and I asked if they had a Benedict F. FitzGerald listed as an F. B. I agent, and they told me no, they did not have him listed.

Q. All right. Now let me ask you this, Miss. You say you called the F. B. I. You don't know what number you called, and you didn't know with whom you talked; is that right? A. I talked with the F. B. I.

Q. Well, you have told us that. Did you call the F. B. I.? A. That's right.

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Q. Now, Miss, let me ask you this. Just what all did you say to the party at the other end of the phone, wire? A. I think I have told you that I asked if they had a [132] Benedict F. FitzGerald listed as an F. B. I. agent.

Q. And the answer? A. No, they did not.

Q. What's that? A. No, they did not.

Q. And did they tell you that immediately? A. No, they checked their files and their records.

Q. And how long they kept you on the phone? A. Yes.

Q. How long would you say it took them to tell you that? A. Oh, I would say it took them maybe five minutes.

Q. And you kept the phone? A. That's right.

Q. And then, what further did you do, if anything, with respect to that matter? A. I didn't do anything further. I was contacted from then on.

Q. But what I want to know, you say that you merely asked if they had an agent named Benedict FitzGerald. Did you say the reason you were making the call? A. No.

Q. Did they, anyone ask you at that end of the wire why you were calling and who were you? A. No.

[133] Q. Did you give your name? A. No, I didn't.

Q. And then you made, you made no further call, or report to the F. B. I.; is that right? A. No, I didn't.

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[134] A. Yes, I do know that she called.

Q. Because she told you, but you weren't there when she called, were you? A. No, I wasn't present when she called.

Q. Now, Miss, how soon was it after February the ninth that an agent of the F. B. I. or the Department of Justice came to you? A. I could not remember an exact date. I would say it was a month.

Q. Well, would you say in the month of March? A. Yes.

Q. And the first part or the latter part? A. Well, I would say the latter part of March.

Q. All right. And where did the agent come, to your store? A. No, he contacted me the Greyhound Bus Terminal where I was working.

Q. At the Greyhound? A. That's right.

Q. Now were you on duty there as a ticket seller? A. At that time I was a telephone information clerk.

Q. What's that? A. At that particular time I was a telephone information clerk.

Q. All right. Now what, was it one agent or two? [135] A. There was one agent.

Q. What's that? A. There was one agent.

Q. One agent came to you, and what did he say when he came to you? A. He questioned the incident and he said that he had been informed that Mr. FitzGerald had represented himself as an F. B. I. agent and he was checking into the matter. He got the story in full detail and in fact he visited me twice.

Q. All right. Now what was his name? A. I don't recall his name.

Q. You didn't think that important? A. He identified himself.

Q. Did he show you credentials? A. Yes. In fact, he, through my boss, he, I was introduced to him.

Q. Now what was your boss' name at that time? A. Mr. Pendleton.

Q. How do you spell it? A. P-e-n-d-l-e-t-o-n.

Q. Pendleton? A. That's right.

Q. And is he still there? A. Oh, yes.

Q. He was your boss at the Greyhound Bus Station. Do [136] you know his first name? A. Mr. B. C. Pendleton.

Q. And he is at the Greyhound Bus Station at 12th and New York Avenue? A. Yes, sir.

Q. 11th and New York Avenue? A. That's right.

Q. And they came to Mr. Pendleton first; is that right, and Mr. Pendleton brought them to you; is that right? A. Yes.

Q. And did he remain there, Mr. Pendleton remain

there when the interview was taking place? A. No. No, he didn't. He withdrew.

Q. All right. Now what did you tell the F. B. I., this agent, at that time? A. Exactly what I have told you and told, mentioned several times the way in which Mr. FitzGerald approached me and the statement he made to the effect that he was with the F. B. I., the F. B. I. is after this man.

Q. Now, and he said he wanted a full and complete report on it; is that right? A. Yes.

Q. And is it your testimony you did not sign a statement? A. No.

[137] Q. Did you tell the agent at that time that the next day you telephoned and verified that there was no agent? A. Yes.

Q. By the name of Benedict FitzGerald? A. Yes, I did.

Q. Now, I understand, now let me ask you this—after Mr. FitzGerald, you say, came in there on the ninth, February, '56, said that he was with the F. B. I., did you communicate that to anyone else other than Mrs. Wooten? A. Yes, it was mentioned to several people that we worked with. It was rather unusual, we both thought.

Q. Would you tell me what sales people you mentioned it to? A. I couldn't recall.

Q. Well, can you give us the name of any of them? A. No.

Q. Can't you think of a single person? A. Not a single person.

Q. Are they still there? A. Most of them are gone.

Q. Can you give me the name of anyone who is still there, or anyone's whose no longer there? A. No. There

is quite a turnover in that store, parttime help, and I don't recall who was there that evening [138] other than they did have ample help, I believe.

* * *

Q. Now, Miss Witness, let me ask you this. Are you friendly or unfriendly towards Mr. FitzGerald? A. By this time I guess I feel very unfriendly toward Mr. FitzGerald.

Q. You are very unfriendly towards him? A. Yes.

[139] Q. That's right, and if you could hurt him, you would like to do that, wouldn't you? A. No, I don't say that I would want to hurt him. I think he is hurting himself, but I have no particular liking for Mr. FitzGerald, not by this time.

Q. Well, now, also you said earlier, Miss Witness, that the Russell Stover owed some duty to Mr. Thomas because he was a customer. A. That's right.

Q. If it was shown that Mr. FitzGerald was a regular customer, would the store feel they owe any duty to him? A. I suppose the store would; yes.

Q. What's that? A. I suppose the store would; yes.

Q. As a matter of fact, he's been dealing at a Russell Stover Company for several years, hasn't he? A. I really wouldn't know.

Q. Did you make any inquiry to find out? A. No.

Q. All right.

Miss Witness, when the F. B. I. came to you at the Greyhound Station, and Mr. Pendleton brought him to you, did he tell you how he happened to be there at that time? A. No, he didn't.

Q. And then you gave him the report; you told him

[140] substantially what you have told us here today; is that right? A. I certainly did.

Q. Now, in point of time, when was it, this candy was the ninth of February—you said the F. B. I. man came to the Greyhound about the last of March? A. I said within about the space of a month. I don't know exactly.

Q. Well, now, do you recall, Miss, was it, near Easter Sunday, of '56? A. I don't recall.

Q. Well, let me ask you this. Wasn't Easter in March last year? A. I believe it was.

Q. All right. Now give me your recollection whether the agent came to you before Easter or after Easter? A. As far as I can recall it was before Easter.

Q. All right. Now then when did the agent come again? A. The next day.

Q. The next day.

Now, incidentally, the day that— the first day he came, can you tell us the day of the week? A. No.

Q. All right. Then he came the next day and it was the same agent and what did he discuss the next day that he [141] did not discuss the day before, if anything? A. What the agent returned for the following day was to see the subpoena that had been served on me. That was the reason for his returning the next day.

Q. All right. And did you have it? A. Yes.

Q. And did you give it to him? A. He looked at it. He gave. he returned it to me.

Q. Did he take it? A. No, he returned it to me.

Q. Do you have that subpoena now? A. No, I don't believe I do.

The Court: I missed that, Mr. Laughlin.

Mr. Laughlin: What—

The Court: What subpoena? Effective the fifteenth for the appearance on February the fifteenth?

Mr. Laughlin: Yes, it was, your Honor. If I may clear that up—

By Mr. Laughlin:

Q. Miss Witness, ubpoena was, was that for your appearance on February fifteenth at that deposition? A. Yes.

Q. And you had that subpoena. He looked at it and gave it back to you? [142] A. That's right.

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Q. Miss Witness, when the agent of the F. B. I. came to you, did you tell them, or show them the card that Mr. FitzGerald had left you? A. No. Miss Wooten had the card. I gave it to her that evening.

Q. Well, did you tell them, tell the F. B. I. at that time that Mr. FitzGerald had left a card with you? A. Oh, yes, I—

Q. Did you, did they ask what was on the card? A. I told him exactly what was on the card.

Q. And did you tell them—all right.

Mr. Laughlin: Now, also, your Honor, I'd like to have an identifying mark on this so the record will—

Mr. Willett: What is that?

Mr. Laughlin: Well, I will get it marked [143] first. Then I will show it to counsel.

• • •

[144] The Clerk: Both for identification.

(The Clerk so marked the card as Plaintiff's Exhibit No. 1 for identification.)

(The Clerk so marked the check as Plaintiff's Exhibit No. 2 for identification.)

* * *

[145] The Court: That is the subpoena to attend February fifteenth, '56?

Mr. Laughlin: Yes, your Honor.

By Mr. Laughlin:

Q. Miss Witness, oh, yes, I will show it to my opponent. Now, Miss Witness, showing you Plaintiff's 2, I ask you whether you have seen that before. A. Yes.

Q. All right. Now that was a check that you received for your witness fee, is it not? A. That's right.

Q. Is that your answer? Answer yes? A. Yes.

Q. All right. And it doesn't say anything on there about F. B. I., does it? A. No.

* * *

[146] Q. Miss Witness, did you show this check to the F. B. I.? A. No, I showed the letter to the F. B. I.

Q. You showed what letter? A. You showed the subpoena. Not the check.

Q. Yes, but did you tell them about a check? A. Oh, yes.

Q. What did you tell them with respect to the check? A. That there was an enclosed check signed by—

Q. Now, Miss Witness, let me ask you this. Isn't it a fact that after the F. B. I. saw the card and saw the check, that they abandoned any further investigation? A. The F. B. I. did not see the card nor did they see the check. I think I stated that.

* * *

Q. Now, Miss Witness, let me ask you this. Did the F. B. I. tell you that they wanted to see the check? [147] A. No, the F. B. I. didn't tell me anything. They only asked me questions. They didn't make any statement.

Q. All right.

Now, Miss, let me ask you this. May I have the original that was marked for identification, offered on direct examination, your Honor, showing you Defendant's 1, you have already testified that you received that.

Will you look at it? A. Yes.

Q. Now, Miss Witness, in this letter, this document Defendant's 1, this letter, Miss Witness, you will notice is dated February 21 of '56, and was sent to you out Mount Rainier, Maryland. If you will notice, it bears a postmark Washington, D. C., February 24. Do you know when you received it? A. The exact date, no.

Q. All right. Now, however, you received this letter, before you saw the F. B. I. agent in March, did you not? A. No, because I would have mentioned that to the F. B. I. agent had I received such a letter, and I did not, so the order in which I have, or the lapse of time there was less than I recall. The F. B. I. agent must have approached me before that date because I surely would have mentioned it to him. I would have mentioned to him about receiving such a letter and there was no reason for me to—I remember the [148] time I did not recall or mention that I had received such a letter, so I would like to say that I was approached before that date. I cannot give you an exact date, but it was before that time, before that letter was mailed.

Q. Then you want to change your testimony? A. I think I didn't make any statement as to the exact time. I only gave an approximate time.

Q. Well, Miss, did you not say earlier that it was at least a month, a month passed before the F. B. I. came to you, an agent of the F. B. I. came to you; didn't you say that? A. I at the time thought it was about a month, but I can recall from the letter that it was before I received the letter. The postmark is the twenty-first on that.

Q. Is it your testimony now that the F. B. I. agent came to you before you received this letter? A. Yes.

Q. All right. Now tell me this. When did you turn this letter over to Counsel Willett? A. I turned it over to Mrs. Wooten.

Q. All right. Now when? A. Oh, I would say a day or two after I received it. The next opportunity that I had to see Mrs. Wooten.

Q. Well, now, I want to be sure I am right. The F. B. I. then, F. B. I. agent came to you? A. Before. Before that date.

[149] Q. Before February twenty-first? A. That's right.

Q. Now, Miss, I show you a 1956 calendar. Maybe, so there won't be any question, have you got a '56 on there, and then—well, it is a genuine calendar. I know that it is a Jefferson Standard, but maybe it will be best to use the court calendar.

Now, Miss, Mr. Thomas came to the store February 9. That was on a Thursday. A. That's right.

Q. And Mr. FitzGerald came there on the ninth and he said he was with the F. B. I.? A. That's right.

Q. Didn't he say he was an F. B. I. agent? A. Said he was with the F. B. I.

Q. Let me ask you this. He never said he was an F. B. I. agent? A. He never made that statement.

Q. Did you ever tell Mr. Willett that Mr. FitzGerald said he was an F. B. I. agent? A. No.

Q. You are positive of that.

Now, Miss, did you know of a suit that Mr. Willett filed on behalf of his client, Mr. Thomas, against Mr. FitzGerald, alleging that Mr. FitzGerald came to your store, [150] the Russell Stover Store, and represented himself to be an F. B. I. agent? Did you ever know of such a suit? A. No, I didn't know of any. In fact, that was the impression that I got, that Mr. FitzGerald was an F. B. I. agent.

Q. Well, you heard your counsel awhile ago, Mr. Pratt, this gentleman here, stand up, tell his Honor he objected to a question, that I was putting words in your mouth, that I was saying that you claimed Mr. FitzGerald was an F. B. I. agent, and Mr. Pratt said you never made such a contention. You heard that awhile ago, didn't you? A. That's right.

Q. You heard that? A. That is very true. I never so much as said he was an F. B. I. agent.

Q. Well, now what I want to know, did you ever tell Counsel Willett that Mr. FitzGerald when he came to the store said he was an F. B. I. agent? A. No, I have only repeated time and again, Mr. FitzGerald said he was with the F. B. I. We are after this man.

Q. Miss, were you ever shown a copy of that suit that was filed, that it said Defendant Benedict FitzGerald on or about February 10, '56, entered the Russell Stover Candy Company in Washington, D. C., and represented himself to be an F. B. I. agent and commanded to know what purchase the [151] plaintiff made at the said store, and demanded the plaintiff in the presence of Mrs. Wooten, manager of said Russell Stover Candy Company, in Washington, D. C., and in the presence of Miss Beverly Kline, clerk

of said candy company, by maliciously stating that plaintiff was an adulterer engaged in criminal conversation with other people, failed to support his wife and son, and uttered other derogatory, scandalous, malicious and insulting words against the plaintiff, knowing such statements to be false.

Now you knew there was such a suit filed, didn't you, signed by Counsel Willett, John R. Willett? A. No, I didn't.

Q. With a Washington office—

Mr. Willett: Your Honor, he's asking so many questions I can't keep up with him and I don't know how the witness, who—he's had about forty in about two minutes.

The Court: Well, the question is, Did you know that any such suit had been filed?

The Witness: No, I never did.

Mr. Laughlin: But you did not tell Mr. Willett that Mr. FitzGerald said he was an F. B. I. agent, did you?

The Court: No, now, Mr. Laughlin; she has been over that. She said she told him [152] that Mr. FitzGerald said he was with the F. B. I. and she said that that left the impression with her that he was an agent of the F. B. I.

Mr. Laughlin: All right.

By Mr. Laughlin:

Q. Now, Miss Witness, coming back then, February the ninth, is the visit of Mr. Thomas to your store, the visit of Mr. FitzGerald to your store, then the next day, February 10, you called the F. B. I.; is that right? A. That's right.

Q. All right. Now, then, having that in mind, this letter is dated February 21. Is it your testimony that between

the tenth of February and the twenty-first of February that the F. B. I. agent came to you? A. To the best that I can recall that would be the time, during that time.

Q. Well, let me ask you this. Your memory is very good about happenings on February 15, 1956, at the deposition. Can you tell us emphatically that the F. B. I. agent came to you between February tenth and February 21? A. I believe—

Q. What's that? A. I can't say emphatically; no.

Q. Then you don't know. It may have been later; is that right? [153] A. I think I have made that clear. I could not say an exact date.

* * *

[156] Q. Now, Miss Witness, when the F. B. I. came to you, what name did they ask you, your name? A. Yes.

Q. What did you tell them, Beverly Kline? A. That's right.

Q. Did they ask you your marital status? A. No.

Q. All right. Now incidentally, the blanks that you filled out at the Russell Stover, did you tell them that you were divorced? A. Yes.

Q. Did you say you were divorced? A. Oh, yes.

Q. You were not divorced, were you? [157] A. No.

Q. That was a false statement, wasn't it? A. I suppose you'd call it a false statement; yes.

Q. Now, and did you tell the F. B. I. you were divorced? A. The F. B. I. never questioned me along those lines.

Q. Now, Miss Witness, tell me this. When Mr. Fitz-Gerald was in the Candy Store, did he make derogatory statements against Mr. Thomas? A. Well, I suppose when you say that the F. B. I. is after this man, you are not doing him any good. You are making such a, you're implying

that there is something out of line and out of order about Mr. Thomas, I—

Q. Well, he did say he had been talking to the F. B. I. about Thomas, didn't he? A. He said the F. B. I. is after this man. I said he said, "I am with the F. B. I."

Q. He said the F. B. I. is after this man and I am with the F. B. I.? A. Yes.

Q. Did he say why they were after him? A. No, he didn't.

Q. In other words, he did not refer to him as an adulterer? A. No, he didn't go into any detail as to why or he was—

[158] Q. Then he didn't say he didn't support his child or children? A. No.

Q. In other words, he didn't say anything that was libel or slanderous, did he? A. No.

Q. Now, Miss Witness, let me ask you this. This morning you were asked a question, when you last saw Miss Goebel. When was the last time before today that you saw Miss Goebel? A. Miss Goebel came into the Candy Store one afternoon and I would say it was, well, I would say it was near the end of February at some time.

Q. Of which year? A. This year.

Q. This year? A. That's right.

Q. All right.

Mr. Laughlin: Mr. Clerk, did I give you that calendar back?

The Clerk: No, sir; you still have it.

Mr. Laughlin: Oh, thank you.

By Mr. Laughlin:

Q. All right, now. Here is 1957. Look at February. Tell us then in what part of February. [159] A. I would say the latter part of February.

Q. Well, the latter part; would you say that last week, twenty-fifth, twenty-sixth, twenty-seventh or twenty-eighth? A. I wouldn't say exactly.

Q. Well, the latter part. Can you tell us the day of the week? A. No, I couldn't.

Q. All right. Now who was present when she came there? A. I believe it was on a Monday because I happened to be working during the daytime. That is about the best I could do for you.

Q. All right. Now would you say it was the twenty-fifth or the eighteenth? A. I wouldn't say.

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[160] Q. What did she say about it, Miss? A. She mentioned something to the effect that it would be ready for us to read and she wondered if we could make some arrangements shortly to read it over and sign it. Now that is as much as I remember about that conversation since I wasn't really involved; to begin with.

Q. All right. This is something within the last [161] thirty days, between now and the latter part of February, and she said it would be ready for you to look at and sign or correct, or something of that kind; is that right? A. That's right.

Q. Is that right? A. (Nodded.)

Q. Well, your Honor, she lets her voice drop, and I am not sure the reporter gets a response.

Is that correct? She said it would be ready to look at, to examine, or to correct; is that right? A. She said, as much as I overheard, that it would be ready for us to read and to sign. Now I don't recall the exact words she used. She was not speaking to me. I was only overhearing bits of the conversation.

Q. Now to your recollection she was referring to the

deposition of February fifteenth of '56, wasn't she? A. That's right.

Q. You had given no other deposition, had you? A. No.

Q. And then as much as you overheard, did she say that it was to be filed on a certain day? A. I don't recall hearing any more than just what I have said.

Q. And now--just a minute—Miss, directing your attention to about the second week of February, somewhere [162] between the tenth and the fifteenth, last month, did Mr. FitzGerald call you with respect to the deposition? A. Yes, he did. I wouldn't actually tell you the exact date because I don't recall. I would say it was a month ago.

Q. Now was that before or after Miss Goebel had been in? A. That was after Miss Goebel had been in.

Q. Now did Mr. FitzGerald tell you to look at it and correct it? A. He asked if I could come into his office that day, and read the deposition. It was ready for signing.

Q. What did you say? A. Well, in view of the fact that I had been ill, and we had had a death in our family, and I had just started back to work and had worked all night and I do work all night, I didn't feel like going in to see Mr. FitzGerald that afternoon. In fact, I didn't feel like inconveniencing myself on that particular day and I told him as much. I said I would read it, but I could not come to his office that day.

Q. Now do you recall anyone else coming to you with the deposition? A. Why, yes.

Q. Who came? A. I don't—well, I do—I did recognize the gentleman here today.

[163] Q. Anyone in the courtroom that you say you see? A. Not now, but there was a—I don't know whether he is the—

Q. What's that? A. Deputy Marshal.

Q. Deputy Marshal? A. Yes, that came into the store after I had read the deposition. It was several days after I had seen the deposition, he came into the store one evening with the deposition in his coat pocket and asked to speak with Miss Wooten, and when she at that time—

Mr. Willett: I can't hear that. Excuse me, your Honor. Would you please speak up.

The Witness: Yes. Deputy. Well, if this man is a Deputy Marshal, he came into the store several days after I had read the deposition. Miss Wooten had a copy of the deposition and we went over—well, I had gone over the deposition and read the whole thing, and I believe it was the next day or several days after that that one evening a gentleman came in the store, asked for Miss Wooten, and she at the time was in Allentown, and he approached me and asked if I had read the deposition, was I going to sign it, and he did not identify himself. However, I
[164] did talk to him. I told him that I would not sign it, that I felt it was not representative of what the deposition should have been, the testimony that I had given. He also asked me if Mr. FitzGerald had said he was with the F. B. I., and I said, "Yes, he did make that statement to me." And that is all the conversation that took place that evening.

By Mr. Laughlin:

Q. Well, now when was that, Miss? Was that before or after Miss Goebel came to you? A. Oh, that was after. That was after Mr. FitzGerald had called. That was after I had read the deposition.

Q. And you say that you saw here in this courtroom today the Deputy Marshal who brought that to you? A. That's right.

Q. Now was it by any chance the gentleman who is standing, who is seated over here? Is this gentleman— A. No, it is neither one of those gentlemen. He was in here earlier. I don't recall what happened to him. He had a light tan suit on.

The Court: Where was he sitting?

The Witness: He was standing by the door and then he took everybody outside to leave.

Mr. Laughlin: He took what?

[165] The Witness: He took the gentleman out, the first case that came up, the young fellow on that, was in here. He escorted him out and brought back —although he didn't identify himself, I recognize him.

The Court: What makes you think that the man that came into your office was a Deputy Marshal? Did he have any credential?

The Witness: No, he didn't show me any credential. He didn't identify himself in any way. He had the deposition in his coat pocket and he just handed to me and asked me if I had read this, and I said, "Yes," I have read it.

He said, "Well, are you going to sign it?" And I in some way connected him with Mr. FitzGerald's office, having nothing to base that on. I just felt that perhaps Mr. FitzGerald, since I hadn't gone in that day to sign the deposition, had sent someone over with the deposition for me to go over, but we had a copy of it and I had already gone over it.

The Court: From whom did you get the copy?

* * *

[166] The Court: Well, was it the day that you were supposed to go to his office?

The Witness: No, I had never made any arrangements with Mr. FitzGerald to come to his office. He called me, wanting me to come in that very day, and I could not make arrangements to go.

By Mr. Laughlin:

Q. But the gentleman who came to your office, I mean came to your store, had it in his pocket, was someone that you recognized this morning? [167] A. Yes.

Q. You saw that man, you remembered was the man who brought it to you; is that right? A. Yes.

Q. And was connected here with the Court in some fashion; is that right? A. Yes.

Q. All right. Now let me ask you this. You said that—

Mr. Pratt: May we approach the bench, please?

The Court: Certainly.

(Counsel approached the bench.)

The Court: It would be well to have the other man here, too.

Mr. Laughlin: Yes. Let me see.

Mr. Ahern: I can make a call. He is an attorney in Washington, your Honor. He just dropped in because I told him.

Mr. Laughlin: Suppose, let's come to the bench. I think this ought to be out of the hearing of the witness.

(Counsel approached the bench.)

By Mr. Laughlin:

Q. Miss Witness, you say that Miss Wooten did have a copy of this deposition; is that right? A. Yes.

[168] Q. And is it your testimony that she got it from Mr. Willett? A. I believe she did.

Q. Did she tell you she did? A. No, she really didn't

say. I believe at that time she didn't say. She was out of town, or left town. She was planning to leave the day that I came into the store that evening to go to work. She says, "The copy of the deposition is in my desk. You read it before you leave here."

And I believe that it was since then that I seem to have gotten the impression that Mr. Willett was, Mr. Willett's copy was. I may be wrong there, but that was my impression.

Q. All right. Now when was it then, Miss, what I want to know, the first time that you saw this deposition?

notice, which was given under the Federal Rules of

A. I cannot give an exact date. I believe that it in fact was after Mr. FitzGerald called me and, of course, Miss Goebel had been in before that time, so I would say it was at least two weeks ago.

Q. About at least two weeks? A. I would say about two weeks ago, giving it an approximate date.

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[169] Q. Well, I mean, did she go into any details why Mr. Willett was contacting her? A. No.

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[170] Q. All right. Now let me ask you this, Miss; do you recall whether or not this was said, reading from page 4, your Honor, by Mr. FitzGerald:

> "Now, Miss Goebel, we are gathered here today to take a deposition for the purpose of discovery pursuant to notice served on Beverly Kline, and Mrs. Mae Wooten, of the Russell Stover Candies, 1343 F Street, Northwest, Washington, D. C., and here today are the two ladies who appeared pursuant to notice, which was given under the Federal Rules of

Civil Procedure, in attendance. You will please note the appearance of John R. Willett, Esquire, of 1705 Fern Street, Alexandria, Virginia—"

The Court: Now, my copy has "Attorney" in front of John R. Willett.

Mr. Laughlin: Oh, if I omitted that—"in attendance. You will please note the appearance of Attorney—" that's correct, your Honor—"Attorney John R. Willett, Esquire, of 1705 Fern Street, Alexandria, Virginia, counsel for Mr. J. Harry Thomas, Jr. Mr. Thomas is at his side. He is the defendant in this action, in the case of Thomas vs. Cassidy, Civil Action numbered 1245, now pending in the United States District."

[171] By Mr. Laughlin:

Q. Now you recall, Miss Witness, whether that was said at that time? A. You are referring to the onset of the deposition, aren't you?

Q. Miss, I am asking you, I have just read something to you and asked you whether or not that was said by Mr. FitzGerald on February fifteenth, 1956, in the National Press Building, when you were there. A. I would say yes.

Q. You would say yes. It was all right. Now, then at that time, at that point, by Mr. Willett:

"Mr. Thomas is not the defendant in this."

Then there's some dots.

Can you tell us whether Mr. Willett said that at that time? A. I don't see how I can answer to a sentence that begins and ends with a lot of dots. I don't think you have completed a thought there.

Q. Well, yes. Now, Miss Witness, this morning you were asked many questions and your answer was invariably

in the negative, and you did not this morning ask at any time to look at a deposition, nor was the deposition shown you. Can you answer me now as to whether or not Counsel Willett on February fifteenth, 1956, said, "Mr. Thomas is not the de- [172] fendant in this."

Then there was an interruption.

Did he say that at that time? A. I would say yes.

Q. All right. Now, then, by Mr. FitzGerald:

"Court for the Eastern District of Virginia. Oh, pardon me, Mr. Willett is right. Mr. Thomas is not a defendant in this action. I was thinking about the divorce action now pending in the Circuit Court for the Montgomery County, Rockville, Maryland, the case of Thomas vs. Thomas, Equity Action 18570, in which he is charged with adultery as a defendant, in view of the fact that he is not a party, maybe we ought to ask him to leave. Since he is not a party. I wonder why he came. He has me confused. Do you have any objection, Mr. Willett, if we suggest that your client, Mr. Thomas, leaves because as you have pointed out, he is not a party to this proceeding, nor do we have any deposition scheduled for him today."

Now, Miss Witness, did Mr. FitzGerald say that on February fifteenth, 1956, at the deposition in the National Press Building?

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[174] By Mr. Laughlin:

Q. Miss Witness, then let me ask you this. Do you recall what I just read to you? A. Yes.

Q. Or do you want me to read it again? A. No, my memory is that good.

Q. You say your memory is good? A. I say it is that good. I can recall what you say.

Q. You remember everything that happened at that statement of deposition? A. I didn't make that statement.

Q. Anyway, you have a good recollection of what happened? A. I am just referring to what you said. That was the question you asked me.

Q. Now, what I have just read, Miss Witness, was that [175] said by Mr. FitzGerald? I will ask you this, was that said by Mr. FitzGerald at the deposition? A. Yes, at some time during the deposition.

Q. Well, would you say it was said at the beginning? A. No.

Q. At what point was that said? A. Mr. FitzGerald would have, or did say that after I had gone to the trouble to identify Mr. Thomas with the picture, and so forth.

* * *

[176] By Mr. Laughlin:

Q. Miss Witness, let me ask you this. Do you recall this afternoon that when his Honor took a recess, of about ten minutes, do you recall that you were in conversation with Mr. Willett right here in the corridor? Do you recall that? A. Oh, yes, I spoke to Mr. Willett.

Q. You were for some time, weren't you? A. Not for some time; no.

Q. All right. Now, Miss Witness, you say the question I just put to you, was not asked at the beginning of [177] the deposition; is that right? A. No, it wasn't.

Q. Now I hand you the deposition. Will you look at it and tell me at what point it did come up?

The Court: Suppose we take a short recess.

Mr. Laughlin: Will you instruct the witness that she is not to confer, in view of her conversations, conference at the bench.

The Court: Let's see, Miss Kline. Do not, during the recess, confer with anyone. Continue reading the deposition, if you like.

(After recess.)

(The witness resumed the witness stand.)

Mr. Laughlin: Shall I proceed, your Honor?

The Court: Yes.

Mr. Laughlin, I do not want to unduly curtail your cross-examination, but how much longer do you expect to go? Haven't you pretty well covered the ground?

Mr. Laughlin: Your Honor, I haven't—again, see, I made a note. I haven't taken the deposition yet. I have made a note of different questions that were propounded by Mr. Willett this morning on each page and I want to cover those.

* * *

[178] Q. Now, Miss Witness, you, when we recessed, you were given this deposition to look over, having reference to the question that I propounded to you, having to do with 4 and 5, after having read that, can you tell us at what stage of the deposition was that question propounded? A. To the best of my knowledge on page 9 about quarter of the way down.

Q. Page 9.

All right, now I hand you page 9. A. The picture that I was asked to identify.

Q. In other words, this, at page 9, question. A. I believe I made that quite clear.

Q. By Mr. FitzGerald? A. Yes.

Q. I show you Plaintiff's Exhibit No. 2 for identification, ask you this is a picture of the same J. Harry [179] Thomas, Jr., who came into your store on the night of February 9, 1956. The answer was yes, and is it your testimony then at that point this other was said? A. That's right.

Q. In other words, then at that point, then was this said at that point:

> "Court for the Eastern District of Virginia. Oh, pardon me. Mr. Willett is right. Mr. Thomas is not a defendant in this action. I was thinking about the divorce action now pending in this Circuit Court for Montgomery County, Rockville, Maryland, the case of Thomas vs. Thomas, Equity Action 18570, which he is charged with adultery as a defendant in view of the fact that he is not a party, maybe we ought to ask him to leave. Since he is not a party. I wonder why he came. He has me confused. Do you have any objection, Mr. Willett, if we suggest that your client, Mr. Thomas, leaves, as you pointed out, he is not the party in this proceeding nor do we have any deposition scheduled for today."

It is your testimony then that it was at that point on page 9 that the question was asked? A. In detail, that picture part, where you are reading, page 4 and page 5, I can't say that that is exactly [180] what was said. I think that is in some way distorted, but I also say that Mr. Thomas was asked to leave the room after I identified him, and the picture was the means of identifying him. This is the picture. This is Mr. Thomas. Is this the Mr. Thomas that came into the store?

Q. Miss Witness, you have said that it was distorted. A. That is right. Should have gotten it.

Q. What part of it was distorted? A. It is, well, it is quite obvious that you would not begin the first paragraph there, would not precede the question that follows on page 9, seems to me that maybe it is a little out of line the way it is all one follows the other.

Q. Well, will you look at it again and tell me what part of it was distorted? Tell me what was true and what part was distorted? A. Mister, I could not repeat the conversation word-for-word. But Mr. Thomas was identified before he left the room, and that was what you're apparently concerned with, and I think I have explained that at that point he was identified, the picture identified him by the picture.

Q. Well, what I want to know, all the question I have put to you, what part of that question that I have addressed to you, read to you, what part of it was distorted? A. Well, as best I can recall, Mr. Thomas was not [181] spoken to in that manner. He was ordered to leave the room.

Q. You mean spoken to in what manner, Miss? A. Well, according to what is written here, Mr. FitzGerald has, you might say, more or less politely asked him to leave the room, and that day it was very little politeness when Mr. Thomas was ordered out of the room. It was quite obvious that Mr. FitzGerald didn't want him in there and his very presence was nauseating to him, or something to that effect, and that doesn't ring true to me what is written in this particular paragraph, the best I can recall.

Q. Well, as I understand, Miss, is this what you mean, that the transcript that you hold in your hands, reflects that he was asked in a polite manner to withdraw or to

leave the room and you say he was not asked in a polite manner? A. Was quite a commotion.

Q. Is that what you mean? A. There was quite a commotion and outburst on Mr. FitzGerald's part when he asked Mr. Thomas to leave.

Q. Tell me, then, just how was it said by Mr. FitzGerald. You say there was a—

Mr. Laughlin: Your Honor, this might be a good time since the gentleman has arrived from Washington, and I think he would like to [182] return. Could we have that other done, of both of them brought in?

The Court: Now, who would you want present here? Who is this gentleman?

Mr. Ahern: His name is Mr. John K. Clifford.

The Court: And you want him and Mr. Everett Thomas, the Deputy Marshal?

Mr. Laughlin: Yes.

The Court: Will you ask Mr. Thomas and Mr. Clifford to come in.

Mr. Ahern: And a Mr. Walker.

The Court: The Marshal?

Mr. Ahern: Yes.

The Court: And Mr. Forrest Walker.

(Mr. Clifford, Mr. Thomas, Mr. Walker entered the courtroom.)

Mr. Laughlin: Your Honor, I wonder if I could have the gentlemen come over here just a little closer, about next to where Mr. Ahern is.

The Court: Let the record show that Mr. Forrest Walker and Mr. Everett Thomas and Mr. Clifford have entered the courtroom and are standing by the counsel table.

[183] Mr. Laughlin: Now, Miss Witness, you said earlier that the gentleman who came to Russell Stover and had a deposition, I believe, in his pocket, overcoat, or in his pocket, you saw him in the court today. Do you recognize either of the gentlemen standing before you as the gentleman who came to your store?

The Witness: Yes.

Mr. Laughlin: Which one?

The Witness: This gentleman standing in the middle.

Mr. Laughlin: The one in the middle?

And, your Honor, that is the deputy, Everett Thomas; am I correct?

The Court: That is right.

Mr. Laughlin: Yes. All right, and the record will show, and then may they be excused then, all three of them?

The Court: Will opposing counsel need them here any longer?

Mr. Willett: We don't need them today. I don't think we get to the point, but we have a couple of questions we would like to ask the witness.

The Court: Which witness, the one on the—

[184] Mr. Willett: Yes, pertaining to this identity.

The Court: Will you need any of these three gentlemen, Mr. Clifford, or Mr. Thomas, or Mr. Walker any further?

Mr. Willett: The only one we need is the one she said, she identified. I believe she identified the gentleman in the middle.

The Court: Mr. Thomas, well, he will be avail-

able anyway. I do not want to hold Mr. Clifford here, if you will not need him any further.

Mr. Willett: No, sir.

The Court: Let all of them be excused and you need not come back, Mr. Clifford.

By Mr. Laughlin:

Q. Your Honor, could I have just—before we came to that—

The Court: You were questioning the witness as to the tone of voice or the methods in which Mr. Thomas was ordered to leave.

By Mr. Laughlin:

Q. Yes, as I understand, Miss Witness, you said that Mr. Thomas was told to leave, but Mr. FitzGerald wasn't very polite about it. Is that what you mean? [185] A. Yes.

Q. And there was an outburst on Mr. FitzGerald's part; is that right? A. Yes.

Q. What did he say or do? A. I don't recall, only in effect he ordered Mr. Thomas to leave the room. His presence annoyed him.

Q. All right. Was there anything else now in that that was distorted other than Mr. FitzGerald's lack of courtesy? A. Well, the point that I made reference to, this point in which Mr. Thomas was asked to leave the room, it is here at the beginning, and it should be after I identified Mr. Thomas, which would be on page 9, where I was shown the picture of Mr. Thomas.

Q. Yes, but the questions only related to that long question.

Now, then, Miss Witness, let me ask you this. Then do you recall Counsel Willett making this statement:

"He came me with me, and this is a public hearing. I have no authority to order him to leave."

First, let me ask you this. Was that question propounded at any time during the deposition by Mr. Willett?

Mr. Pratt: If the Court please, do you mean question or statement, Mr. Counsel? Is that in [186] the form of a question?

Mr. Laughlin: Well, it is by Mr. Willett.

Mr. Pratt: That's right?

Mr Laughlin: He came here with me.

Mr. Willett: You refer—

Mr. Laughlin: Just a minute. I suppose, your Honor, is it all right for me to answer Counsel Pratt? I felt—

The Court: However it is characterized, it is those words.

Mr. Pratt: I wanted to be—I thought the use of the word question might throw the witness off, if the Court please. I think it was a statement.

Mr. Laughlin: Let me ask you this. We will put it this way. At the deposition on February fifteenth, 1956, were those words uttered by Counsel Willett?

The Witness: Yes.

By Mr. Laughlin:

Q. All right, and at what point in the deposition, at the beginning, would you say? A. No, I would say when Mr. FitzGerald made a point of ordering Mr. Thomas to leave.

Q. Well, what I want to know was that, that those [187] words, were they uttered by Mr. Willett at the point that is shown in this deposition on page 5, or were they

uttered at another point in the deposition? A. I think I have made clear that this whole conversation here, Mr. Thomas being ordered out of the room, was not in order.

Q. Then would your answer be that that also should go on page 9? A. That's right.

Q. All right. Then would you say also that the following by Mr. FitzGerald—

> "I think that he ought to leave because he's not a party and he was not invited to attend. I have no desire to have him here at this time. Although I have no personal animosity toward him. This is a small room, the air is congested, would you please step out, Mr. Thomas. You will find a reception room just behind the door and there are some magazines that you might want to look at or look out or at now."

Was that said, also, at or about page 9? A. No, those exact words were not used.

Q. Not used at all.

* * *

[188] Q. All right. Now up to that point, however, Miss, it was going on, wasn't it, up to the time that Mr. Willett objected, the recording device was in operation, wasn't it? A. That's right, which was at the very beginning Mr. Willett made the objection.

Q. Now, you recall, then, Miss, that Mr. Willett said, "And you have a machine going too, that is illegal, make a note of that, and the stenographer is your secretary—"

Mr. Willett: Excuse me. Where is it you are reading from?

Mr. Laughlin: Page 18 at the very top.

By Mr. Laughlin:

Q. By Mr. Willett, "And you have a machine going too, [189] that is illegal, make a note of that, and the stenographer is your secretary; note that, too. I object to her taking this down."

Now it was at this point that Mr. Willett objected, didn't he? A. Not at that point on page 18.

Q. Did he object earlier? A. At the very beginning. I think I have said that about three times.

Q. Will you show me where he objected, Miss; will you look. A. Well, I believe we could say that it started with the proceedings on page 4.

Q. What was that, Miss? A. That should have begun, the proceedings, page 4.

Q. Well, you think that should have been at 4? A. That's right.

Q. Now, Miss, do you recall this morning when you were examined by Counsel Willett, that you were asked a question about this, "You have a machine going, make a note of that", and this morning did you not deny that Counsel Willett said that? A. No, I did not deny it.

Q. You did not deny that? You are positive of that, in your testimony this morning, you did not deny that? Is [190] that your testimony now? A. On page 18. I don't recall of Mr. Willett—was referring to page 18, if that is what you're referring to this morning?

Q. Well, Miss— A. But—

Mr. Laughlin: Your Honor, naturally it isn't written up. We have all made a note of that, that Counsel Willett called her attention to page 18. Her answer was that his statement was not made by counsel.

Mr. Willett: At that time.

Mr. Laughlin: That is her testimony this morning.

The Court: Have you reached a breaking point, Mr. Laughlin?

Mr. Laughlin: This would be a convenient time.

The Court: All right. Suppose we take a break now, then. I would suggest that we reconvene at 9:30 in the morning.

Mr. Laughlin: Satisfactory, your Honor.

The Court: Do you think that in another half half hour you can close?

Mr. Laughlin: I think by taking this with
[191] me, I certainly will do my best, your Honor. The only point I want to make in observation there is to desire on my part, no desire to prolong this unduly, because we all have other matters, but I do want to remind your Honor that Counsel Willett this morning took this page-by-page, and he asked certain questions. At least, I think two or three on every page, and we made a note—

* * *

Mr. Laughlin: Your Honor, would Mr. Willett tell [192] us now whether he is willing to accept service of process in the case filed in the District Court. That will simplify in other case—

If he is willing to accept process.

* * *

Mr. Laughlin: First, your Honor, I will be very glad to reply. There's never been, I can speak for myself—I can speak for Mr. Ahern—we have never at any time attempted to contact Miss Kline or Miss

Rebis—her correct name is Rebis—or Miss Wooten. Now, also, I wish counsel would also assure us there will be no more anonymous and vicious calls made to Mrs. Thomas. She has occurring over the telephone threats. Now that had to come from someone. I think Mr. Pratt is an honorable person, and if he could [193] give us some assurance that he will instruct the person with whom he contacts not to call Mrs. Thomas—

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[1] **Stenographic Transcript of Proceedings of March 26, 1957.**

* * *

March 26, 1957

Appearances:

Edward D. Harrigan, Esq., Hugh R. Tankersley, Esq., James J. Laughlin, Esq., Albert L. Ahern, Esq., for the Plaintiff.

John R. Willett, Esq., John Pratt, Esq., for the Defendant.

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[2] BEVERLY REBIS KLINE, the witness on the stand at the time of the recess, having been previously sworn, was examined and testified further as follows:

Cross Examination (Continued) by Mr. Laughlin:

Q. Mrs. Kline, you were asked about different parts of the deposition yesterday by Mr. Willett. I will ask you

this: When you were in Mr. Willett's office or when you were in Mr. Pratt's office or Mr. Rogers' office were you ever acquainted or shown the certificate signed by Pauline Goebels? A. No.

Q. Has this ever been shown to you, and I quote:

"I, Pauline Goebel, the officer before whom the foregoing deposition was taken, do hereby certify that during the past [3] thirty days I have made repeated efforts to locate the witnesses Beverly Kline and Maye Wooten to have them read, correct, and sign the foregoing transcript of their testimony. In the case of Beverly Kline, I have been advised by Maye Wooten, and therefore believe, that Beverly Kline has not been, and is not now available because of the fact that she is ill, is under the care of a physician and is suffering from a mental disturbance, and that only during the past week her condition was aggravated by an act of suicide committed by a member of her family. In the case of Maye Wooten, I have been advised and therefore do believe that she has not been and is not presently available because she does not have an accurate memory as to what took place on the occasion of the deposition proceedings and that she has been advised to refrain from reviewing the transcript until she has had an opportunity to confer and be advised by attorney John R. Willett, counsel for the defendant, who according to a report initiated by the latter's office, is and has been for the past thirty days absent from Virginia."

And it is signed by Pauline Goebel.

Now, first, I understand that was never shown to you. A. Oh, yes, that was shown to me.

Q. Were you asked about it by anyone? A. No.

Q. Did Mr. Willett ask you about it, whether that was true or not? [4] A. No.

Q. Did Mr. Pratt ask you about it? A. No, he didn't.

Q. Did Mr. Rogers ask you about it? A. No.

Q. Then you were never asked about whether that was true or not? A. No.

Q. Now, I will ask you this, what is contained in this certification, is it true or false? A. I would say it was false.

Q. Is all of it false? A. Not in its entirety, no.

Q. Let me ask you this—were you ill any time during January, February or March of this year? A. Yes, I took a week's vacation due to the fact.

• • •

[5] Q. "I, Pauline Goebel, the officer before whom the foregoing deposition was taken, do hereby certify that during the past thirty days I have made repeated efforts to locate the witnesses, Beverly Kline and Maye Wooten."

Now, that part—do you know whether or not Miss Goebel made efforts in the month of January or the month of February to locate you?

Mr. Willett: If it please the Court, I think first of all we have got to establish the date of the deposition, otherwise it seems to me what this witness says may not be material to the issue.

The Court: I do not think the certificate is dated.

Mr. Laughlin: The certificate is not dated.

• • •

[6] Q. The second week—now, that hasn't been so long ago; February was only last month, Miss Witness. Will you look at that and tell us what time you were away in

the month of February? A. Well, the date, as clearly as I can recall, I took the week off from the 6th of February through the 13th. My week does not begin with a Sunday or a Monday. I was not available during that time nor did I at that time work at the candy store. I felt, at that time, I needed a rest.

Q. Have you finished? A. Yes.

Q. Do I understand that you were away, February 6 to February 13? A. That's right.

Q. You were not at the Greyhound Bus Depot and you were not at the Russell Stover candy store? [7] A. That's right.

Q. Would the records of both of those places show you were away during that week? A. Yes.

Q. And all during the rest of the month you were available? A. Yes.

Q. And you received no message that Miss Goebel was trying to contact you, is that right? A. No, I did not receive any message from Miss Goebel, sir.

Q. You mentioned you felt you were over-worked and you needed a rest. Did you have a break-down? A. No.

Q. You were not suffering from any mental disturbance? A. No. I could verify that. I went to see a doctor and I am sure he could give you whatever evidence you want. I did not suffer from any nervous or mental disorder.

Q. What is the doctor's name? A. Dr. Irving Grassgreen.

Q. How do you spell the last name? A. G-r-a-s-s-g-r-e-e-n.

Q. Where is he located? A. He is located in Queenstown, Maryland; I can't recall the exact address.

Q. Is he a regular physician or a psychiatrist? A. He is a regular physician.

[8] Q. Would you say Dr. Grassgreen treated you between the 6th and 13th of February? A. Yes. You might say he gave me some advice as to the number of hours a woman should work during a week.

Q. But the point is this, you went to see him and you were off from the 6th to the 13th of February? A. That's right, I took a vacation and not sick leave. I decided I needed a vacation and that is on record with the bus company.

Q. In other words, it was not a disturbance or not a break-down—physical and mental strain I believe you might call it? A. I did not have a mental break-down.

Q. But you had a physical and mental strain? A. That's right.

Q. Now, Miss, was there not some misfortune in your family also? A. Yes, during that time, a relative—to be specific an uncle of mine committed suicide.

Q. And when did that happen? A. I can't give you the exact date because no one seems to know exactly when he took his own life, but I believe it was probably on a Monday and I believe it was on—I can't be certain of that either, but I believe it was the 1st or the 18th. It was on a Monday and it was on the 1st or the 18th. Mr. FitzGerald [9] contacted me the day of my uncle's funeral and requested that I come into his office and sign a deposition.

Q. In other words, you remember the events by the funeral of your uncle or do you remember the events by the contact with Mr. FitzGerald? A. They were both on the same day.

Q. Well, having told us that, tell us what date it was? A. I think I have already said I couldn't say whether it was on the 1st or 18th.

* * *

[10] Q. Tell me this, was it accurate that Mr. Thomas came in and bought some candy, was that true or false? A. That was very definite, Mr. Thomas came into the store and made a purchase.

Q. That was not false, was it? A. No.

Q. Was it true or false that Mr. Thomas asked that candy be dispatched to someone in Texas?

Mr. Willett: Excuse me, I do not like to keep interrupting but I would like to find out if he is finished with [11] this certificate and his testimony on that before he gets into the general disposition? I understood he was going to examine the witness as to this certificate, point by point, and we seem to be getting into the main body of the deposition.

The Court: Finish the certificate as to the accuracy of the transcript.

By Mr. Laughlin:

Q. Now, Miss, do you know whether Attorney Willett was absent from Virginia at any time during January, February or March? A. I was under the impression Mr. Willett was in Florida on vacation, I believe the first part of February. I can't give you the exact dates.

Q. How did you find that out? A. Well, through Miss Wooten. She made the remark that Mr. Willett was on vacation in Florida.

Mr. Laughlin: Now, I am through with the interrogation as to the certificate.

By Mr. Laughlin:

Q. Now, Miss, you said you were shocked at what you saw in the deposition. You say, however, Mr. Thomas came in and bought a box of candy. You said that was true. Now, let me ask you this—it is true or false, Mr. Thomas asked that candy—heart-shaped box of candy, be sent to somebody in Texas; is that true or false?

[12] Q. Now, Miss Witness, yesterday I was referring to page 7 of the deposition. Yesterday Attorney Willett asked you, on page 7, if he used the words "my goodness"; do you recall him asking you that?

Mr. Pratt: If the Court please, I think counsel should read the whole statement attributed to Mr. Willett because as it now stands it seems to be out of context.

The Court: Go ahead.

By Mr. Laughlin:

Q. Let me ask you this, did Mr. Willett use the term "my goodness"? A. I don't recall Mr. Willett's using that term.

Q. Would you say you do not recall or would you say he did [13] not use the term? A. I would say he did not.

Q. Do you recall any other term of surprise he may have used during the deposition?

The Court: Mr. Laughlin, I think you are going far afield now. Let us stick to what the deposition says.

Mr. Laughlin: Very well, sir.

By Mr. Laughlin:

Q. Tell me this, Mr. Witness, during this deposition can you tell us whether Attorney Willett and Attorney Fitz-

Gerald were friendly with each other or was there hostility between them? A. As I recall, Mr. Willett didn't express any personal hostility toward Mr. FitzGerald. I don't believe Mr. FitzGerald expressed any personal hostility toward Mr. Willett. The methods that were being used seem to be questionable in Mr. Willett's mind; the tape recorder or whatever type of recording device that was, and the fact that Mr. FitzGerald had his secretary taking the notes and, of course, that all raised a question, but as far as any open hostility—no, I wouldn't say that.

Q. In other words, then it is your testimony that Attorney Willett questioned the method such as the tape recorder, the use of Mr. FitzGerald's secretary taking the deposition? A. That's right.

Q. Did he question anything else? Were any other methods [14] questioned? A. Not to my knowledge.

Q. You recall yesterday—and again referring to page 8—Attorney Willett asked you this question: "Did you at that time and place have occasion to meet one J. Harry Thomas, Jr., the gentlemen who was asked to leave the room a few minutes ago and who is in the other room?" You were asked that question yesterday by Attorney Willett. Do you recall being asked that in the deposition? A. Yes, Mr. Willett, I believe would have asked that question, but I can't recollect his exact words.

Q. It is your recollection that is what he asked?

Mr. Willett: If it pleases the Court, I think he is misleading and confusing the witness. I think out of fairness to her he should state who posed the question according to the deposition. Let it be known who asked the question, Mr. FitzGerald or Mr. Willett, and let him ask the question. I think he is trying to confuse the witness.

Mr. Laughlin: I am pointing to the question as it was put yesterday by Counsel Willett.

Mr. Willett: It is my interpretation it was contributed to Mr. FitzGerald, but I may be in error.

Q. Miss Witness, who asked you if you knew J. Harry Thomas, Jr.? Who asked you that question, Mr. Willett or Mr. FitzGerald? [15] A. Definitely Mr. FitzGerald asked me the question. I was to identify Mr. Thomas. Of course, that was the question Mr. FitzGerald asked.

Q. Would you say he asked it in just the manner in which it appears here—"Did you at that time and place have occasion to meet one J. Harry Thomas, Jr., the gentleman who was asked to leave this room a few minutes ago and who is in the other room?" Was it asked you in that manner and in that fashion? A. I wouldn't say definitely. Mr. FitzGerald probably did make that statement to me, but I would like to know at what point that question was asked. That has some bearing on the subject.

Q. I am asking you this, did Mr. FitzGerald ask you that question; that is what I am asking. A. And I will go so far as to say he could have asked me that question.

Q. He could have asked you? A. You don't deny he did, do you? A. I don't deny it.

Q. I will ask you this, Miss; did you answer Mr. FitzGerald in this fashion—page 9—"Yes, I met him for the first time on February 9, 1956." Do you understand the question, Miss? A. Yes.

Q. Did you answer him in that manner? [16] A. Yes.

Q. Then, that is true; isn't it? A. (No response.)

Q. Now, can you tell me this, Miss Witness, were you at any time during the deposition shown a picture of J. Harry Thomas, Jr.? A. Yes.

Mr. Pratt: If the Court pleases, this question has been asked five times if it has been asked once. I hesitate to object, but it seems to me this witness is being unnecessarily badgered.

Mr. Laughlin: Your Honor, I disagree; that question has not been asked five times.

The Court: I think, in order to save time, go ahead and ask it.

Q. You were shown a picture, is that right? A. Yes, I was shown the picture.

Q. Now I will ask you this, yesterday you were asked this question—page 9—by Mr. FitzGerald, how you first came to meet the man in the picture. Answer, "Mr. Thomas came into my store where I worked and told me he wanted to buy a box of candy, so I took the order." Were you asked that question and did you make that answer? A. No, I did not.

• • •

[17] By Mr. Laughlin:

Q. Did you make an answer, "The candy was ordered sent to [18] a party in Texas, Dallas, Texas, I believe. I have the sales slip he filled out with me in my purse here somewhere. Do you have it, Mr. Willett?" Did you make that answer? A. No, I did not.

Q. Did you make an answer at all? A. I would have answered that question, yes.

Q. Well, what answer did you make?

• • •

[19] Q. Do you know whose handwriting this is? A. Yes, now that was filled in by myself. The type of purchase and amount of sale before I handed the form to Mr. Thomas was filled in by me.

Q. The writing on here, Miss Billie Cassidy, whose writing is that? A. I have no idea.

• • •

[22] Q. Miss Witness, you were asked this question on page 11—did you make this answer? First this question by Mr. FitzGerald. "Now, how do you know of your own personal knowledge he was there?" Answer, "I took his order, Mr. Thomas told me to mail it. He was given the sales slip here and he filled it out himself. He filled in the address and completed the order and I took the sale for that purpose and he requested, and as the clerk [23] that is my job and my responsibility. He filled in the complete order and I merely took the sale from him. I received it. All customers where the candy is to go if they want us to mail it." Now, were you asked that question and did you make that answer? A. To begin with, the question was asked—would you repeat the question and may I take time to have you repeat it?

Q. The question, "Now, how did you know this of your own personal knowledge • • •" A. Now, that's what I refer to, what is Mr. FitzGerald referring to? You are asking me a question there—meaning what?

Q. Miss, I will ask you again, at this deposition did Mr. FitzGerald ask you this question on page 11, "Now, how do you know this of your own personal knowledge?"

Mr. Willett: Your Honor, I think out of fairness he should back up to the preceding question.

The Court: He will.

By Mr. Laughlin:

Q. Will you tell the Court, in your own words, what does this refer to? What we are relating to, Miss Witness, is that it was sent to Dallas, Texas, to Billie Smith Cassidy.

"Now, how do you know this of your own personal knowledge?" A. That was Mr. FitzGerald's question, but that was not my answer.

Q. What answer did you give? A. I think I repeated what took place any number of times. [24] I did not see Mr. Thomas fill in the order. That was what Mr. FitzGerald was trying to say and I didn't give that answer.

Q. Is it your testimony that someone else filled in the order? A. Yes, I do not know who filled in the order.

Q. Now, I will ask you this then, page 12, were you asked this question by Mr. FitzGerald? "Does this, what you have just shown us purport to be a sales slip filled out by J. Harry Thomas, Jr., number 'C' as in Charlie, 22033. Was that made out by that gentleman?" Were you asked that question and did you make this answer, "Yes, he wrote that on there; yes, he did." A. The question was no doubt put to me in that way, but that was not my answer.

Q. What answer did you make? A. Just what I have repeated here about five times already this morning, that I did not see Mr. Thomas fill in the order.

The Court: Now, let us go on to something else.

Mr. Laughlin: All right, your Honor.

By Mr. Laughlin:

Q. Now, Miss, let me ask you this—you were present at the deposition, page 17, I ask you whether or not this question or this statement was made by Mr. FitzGerald: "Miss Wooten, please don't coach the witness. Miss Wooten, you will have an opportunity to testify later on providing you so desire. We [25] wanted to examine you first but Mr. Willett advised you not to talk. If you desire to overlook Mr. Willett's admonition we will examine you after Miss Kline has spoken." Do you recall whether that question

was asked by Mr. FitzGerald or that statement was made by Mr. FitzGerald at the deposition? A. Mr. FitzGerald made some mention of not having any one coach me or give answers; that I recall. Whether anything further was said or how Mr. FitzGerald phrased that, I don't recall the words. He did make some reference to the fact that I was being coached by Miss Wooten or something to that effect.

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[26] Whereupon, **MAE WOOTEN** was called as a witness, and after having been first duly sworn, was examined and testified as [27] follows:

Direct Examination by Mr. Willett:

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[44] Q. I invite your attention to page 23 of this deposition, to a statement purported to have been made by Mr. Willett. I ask you if Mr. Willett made this statement: "No, I am objecting to you telling everyone that you are a member of the FBI and I intend to develop that and take it up with the FBI. Get that on the record, the FBI, and I will see you hear from them."? A. No, I did not hear you make that statement.

Q. Now, at any time during the depositions did you hear Mr. FitzGerald say, "Take is easy, Johnny boy, keep cool as I want it in the record." A. No, I did not.

Mr. Laughlin: Of course, your Honor, I do not know what that pertains to or what it bears on.

The Court: I think that it is immaterial.

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[50] Q. Now, I invite your attention to this certificate, over the signature of Pauline Goebel: "In the case of Beverly Kline I have been advised by Mae Wooten, and therefore believe, that Beverly Kline has not been, and is not now available because of the fact that she is ill, is under care of a physician and is [51] suffering from a mental distrubance, and that only during the past week her condition was aggravated by an act of suicide committed by a member of her family." Did you give that information to Miss Goebel or any other person? A. Not mental disturbance, I did not.

Q. And did you give the balance of that information to her? A. In substance, yes.

Q. Will you state if Miss Goebel ever contacted you after the time she went to the store relative to getting your signature on the depositions? A. Yes.

Q. When did that take place? What were the circumstances? A. The following week, the day Miss Kline's uncle was buried. I don't remember the date. It was on a Monday, Miss Goebel called and asked if we were coming over and that is when I told her Miss Kline was ill and also talked to Mr. FitzGerald that day.

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[52] Q. Now, at any time did you furnish information that is contained in the certificate signed by Pauline Goebel to the effect, "In the case of Maye Wooten, I have been advised and therefore do believe that she has not been and is not presently available because she does have an accurate memory as to what took place on the occasion of the depositions proceedings and that she has been advised to refrain from reviewing the transcript until she had an opportunity to confer and be [53] who,

according to a report issued by the latter's office, is and has been for the past thirty days, absent from Virginia." Did you give that information to Miss Goebel? A. No, not all of that.

Q. What did you give? A. I did tell Miss Goebel I had been advised by Mr. Rogers not to sign the papers until you had read them or I had contacted you about them.

* * *

[56] Defendant's exhibit number 1 reads as follows:

"Benedict F. FitzGerald, Jr., Counsellor at Law, National Press Building, Washington 4, D. C., February 21, 1956. Miss Beverly Kline, 4109 Rainier Avenue, Mr. Rainier, Maryland. Dear Miss Kline:

"*Re.* Irene R. Thomas v. Billie Smith Cassidy, U. S. D. C.—E. D. of Virginia, civil action number 1245.

"I want to take this opportunity to thank you for appearing in the deposition proceeding held in my office on February 15, 1956. I also want to take this opportunity to clear up any misunderstanding that might be in your mind relative to this case, since it was quite obvious that prior to appearing in my office you had visited the Willard Hotel and met with Mr. J. Harry Thomas, Jr., and John R. Willett, Esq., attorney for Mr. Thomas and Mrs. Cassidy who gave you their side of the situation.

"I am an attorney for my sister, Irene Thomas, 10019 Markham St., Silver Spring, Maryland. Mrs. Thomas filed suit in the circuit court for Montgomery County, Rockville, Maryland, equity number

19570 on October 17, 1955 alleging adultery. Since that time, I have had considerable difficulty in obtaining support for my sister and her seven-year old son. My difficulties have been complicated by the fact that my brother-in-law, J. Thomas, Jr., has been residing with Mrs. Billie Smith Cassidy, 521 Ripley St., Alexandria, Virginia, who is married to Col. Robert F. [57] Cassidy now in Korea. The situation became so difficult that I found it necessary to file a suit against Billie Smith Cassidy in the United States District Court for the Eastern District of Virginia on November 1, 1955, alleging alienation of affection and criminal conversation. After the suit was filed, Mrs. Cassidy moved to Texas and refused to submit to interrogation. Meanwhile, Mr. Thomas was hard to locate, and I could not interrogate him, though the Court of Maryland issued an order. *Ne exeat* which in effect precluded him from leaving Maryland. Accordingly, on February 9, 1956, when I saw Mr. Thomas enter the Russell Stover Candy Co. where you were employed as a sales girl, I was eager to talk with you to determine if he was still sending expensive gifts to Mrs. Cassidy in Texas while his wife and child were going without his support. This is the reason I appeared at your store, gave you my personal calling card setting forth that I was an attorney at law with offices in the National Press Building, and advised you that I would take your deposition 6 days later in my office. Thereafter, I issued you a notice to take your deposition, which I mailed to the manager of your store, Mrs. Maye Wooten, a copy of which was transmitted herewith.

At the same time, I sent a man over to serve a subpoena on you; at which time, I gave you my personal check, drawn on the Riggs National Bank, number 606 in the amount of $3.00. [58] I believe the check had my name and address identifying me as an attorney on it, and was delivered to your custody approximately two hours after I talked with you. At the time, I had no idea of where you resided; so I was unable to calculate the exact mileage to you and from your residence. If you will advise me what the mileage is, I will be glad to forward you a second check in addition to the regular witness fee of $3.00.

"To demonstrate to you the reason for my action, I am transmitting to you together with this letter some photostatic copies of correspondence that Mrs. Cassidy forwarded to my brother-in-law, J. Harry Thomas, Jr. These have been filed in the court and are merely being forwarded to you to show you the evidence which prompted me to file the suit in behalf of my sister, Mrs. Thomas, which Mr. Thomas regarded as frivolous.

"I want you to know that I appreciate your assistance and want to clarify any confusion you had that I was working for any branch of the Government. I am sure that the enclosed card which I gave to you at the time and the check which followed two hours later would be sufficient to identify me.

"Would you also advise me if the time you lost from work was reimbursed by the company; if not, if you will send me a statement of the amount involved, I will be glad to [59] reimburse you for that time.

"I appreciate your position and was sympathetic with remark that you were only a poor sales girl and knew nothing about involved legal matters.

"Please convey my graditude to Mrs. Wooten who has appeared.

Gerald, Jr.

"Sincerely your, (signed) Benedict F. FitzGerald, Jr.

"CC: Mrs. Maye Wooten."

* * *

[61] CROSS EXAMINATION by Mr. Laughlin:

* * *

[62] Q. Now, Miss Wooten, is your memory good as to what happened on February 15, 1956? A. Yes, I think it is.

Q. In other words you would remember just everything, would you say, that took place at that deposition? A. I would remember all outstanding things that took place, I'll say that.

Q. Well, when you say outstanding, you mean by that certain aspects of it?

* * *

[63] Q. Now, Miss Witness, when did you first know that you were going to have to go to the Press Building for this deposition? A. The night of February 9 Miss Kline was served with the papers and I was advised by—that I would be served and the morning of February 10th I received through the mail a copy of the papers that were given to Miss Kline the night before.

Q. And that was a subpoena, wasn't it, for you to ap-

pear on a certain day? A. No, it was a copy of Miss Kline's subpoena. I was never served with papers myself.

Q. In other words, it was only for the appearance of Miss Kline, is that right? A. That's right.

Q. You went along just to give her aid and comfort, is that it? A. I guess I had to take the boy of candy.

[64] Q. You what? A. I had to take the box of candy.

Q. Were there any kind of documents or papers directing your attendance? A. No.

Q. And did you see the subpoena or papers that were served on Miss Kline or sent to Miss Kline? A. Yes, sir.

Q. Did that call for the production of certain documents? A. Yes.

Q. What did it call for? A. For the mail order that Mr. Thomas had left at the store for a box of candy to be mailed.

Q. Anything else. A. And the card that was enclosed.

Q. And did you produce that? A. Yes, I did.

Q. Do you know what became of it? A. Mr. FitzGerald took it. It was given to him in his office.

Q. And did he keep it? A. To my knowledge he did. He did not give it back to us.

Q. And what about the sales slip? A. That is what I am talking about.

Q. What about the box, did he keep the box of candy?

[65] A. Oh, no, he never even asked for the box.

Q. Then, as far as you know that slip or that order form remained with Mr. FitzGerald? A. As far as I know, yes.

Q. Now, how did you happen to meet counsel Willett at the Willard Hotel? A. Well, on instructions from Mr. Rogers, I should say.

Q. When did you contact Mr. Rogers? A. The morning of February 10th, the next morning.

Q. Did you do that on your own volition or was that at the suggestion of someone? A. At my own volition, I knew I should have to.

Q. In other words, you telephoned him in Kansas City? A. I did.

Q. And then you got instructions from him? A. Yes.

Q. What were the instructions?

Mr. Willett: Your Honor, what is the relevancy of this question. He can ask her questions pertaining to the deposition. I do not see the relevancy of this.

Mr. Laughlin: Your Honor, these questions are directed at Mr. Willett's appearance on the scene at the Willard Hotel. I want to know how that came about.

The Court: You have it as to how that came about.

Mr. Laughlin: I want to know what instruction she was [66] given by Mr. Rogers.

• • •

Q. In the conversation you had with Mr. Rogers were you told to contact Mr. Willett? A. I was told to contact Mr. Thomas's attorney.

Q. Now, how did you know who his attorney was? A. Mr. Rogers told me how to find out.

Q. What was that? [67] A. Mr. Rogers told me how to go about finding out.

Mr. Willett: I am going to object to that. We had four or five objections on direct examination when I was trying to find out information in regard

to the telephone conversation and they were all sustained.

The Court: I think I will let her answer the question. I do not see that it is prejudicial to either side or helpful as far as that goes.

By Mr. Laughlin:

Q. What were you told? A. He told me to call the civil court and I could get the information or they would tell we who Mr. Thomas's attorney was.

Q. You just said a moment ago you did not know there was a lawsuit? A. I didn't. I called Mr. Rogers and told him the mail order had been subpoenaed and should we honor that subpoena, and asked him if we had to produce the mail order. He told me to get in touch with our customer's attorney and have, and call Mr. Rogers back and give him Mr. Willett's name and telephone number so he in turn could call Mr. Willett.

* * *

[71] Mr. Willett: Your Honor, I will be glad to make a statement for the record. When I first heard about the Russell Stover Candy Store was when I received a call from Mr. Rogers in Kansas City, and I have already told you that about three times, in three trials, over a year and a half already. The first time I ever heard about the Russell Stover Candy situation on February 9, was when Mr. Rogers called me and said his girl had been subpoenaed and wanted to know what it was all about and I did not know. So, after his call I was trying to find out what was taking place. I have no objections at all and I have nothing to conceal and Mr. Laughlin is perfectly free to ask this witness

anything he wants to. He could ask her a million questions on what was the situation at the Willard Hotel and as the witness Kline, and as I am sure this one will, tell the truth.

The Court: It seems we are losing time. Let us go ahead.

Mr. Willett: I would like to make a statement to clarify a point. Prior to the time I entered my appearance in the case the episode and allegations against Mr. FitzGerald, that he had [72] broken into an automobile, was already in progress. The criminal warrant was not issued by me and the first time it came to my information was when the court asked me to clarify this issue last year. I have yet to see the criminal warrant or anything about it.

The Court: All right, let us go ahead.

* * *

[73] Q. Now, Miss Witness, let me ask you this. Having in mind February 9, 1956, at the candy store, you saw Mr. FitzGerald that day in the candy store. You saw him in conversation with Miss Kline? A. Yes.

Q. Now, incidentally, is that her real name? Is it Beverly Kline or Beverly Rebis?

Mr. Willett: Your Honor, I am going to object to that.

Mr. Pratt: I join the objection.

The Court: The objection is sustained.

By Mr. Laughlin:

Q. Now, Mr. FitzGerald never represented to you that he was an agent of the FBI, did he? A. No.

Q. And you are only relying on what Miss Kline told you, is that right? A. That's right.

Q. Now, on this deposition, Miss, you went there with Miss Kline. You recall a recording device or recorder? A. Yes, I do.

Q. That was turned on, was it? A. Yes.

Q. Was it kept on all the time? A. I don't know.

Q. In other words you would not deny the recording device was in operation until the depositions were concluded, would you?

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[74] Q. Now, Miss, before you were here yesterday, when did you last talk to Mr. Willett? A. Last Friday.

Q. When was that? A. Last Friday.

Q. And did you discuss the depositions with him? A. Yes.

Q. Now, where was that conversation; in his office? A. In his office.

Q. Who else was present? A. Mr. Pratt and Miss Kline.

[75] Q. How long were you there? A. I would say an hour and a half or two hours.

Q. Was the deposition taken up page by page? A. No.

Q. Was it taken up at all? A. We talked about it.

Q. And were you shown any parts of it? A. We talked about a few parts of it. Mr. Willett asked me if I said certain things. I either answered yes or no.

Q. Do you know what questions he put to you?

Mr. Willett: Your Honor, what would be the relevancy of that. If he is trying to check her credibility I do not think this is germaine to the issue. We are concerned with what happened on February 9 and 12, 1956.

Mr. Laughlin: The point is this, if Mr. Willett did ask the witness about certain parts of the dep-

osition we would have a right to know without taking it up page by page, whether he confined it to just certain parts or whether he covered the whole field.

The Court: I do not think that is material, Mr. Laughlin.

Mr. Laughlin: I would to preserve that point and at a later time I would like to make the proper statement for the record.

By Mr. Laughlin:

Q. Do you recall and I am reading from page 18, Mr. Willett [76] made this statement: "And you had a machine going too, that is legal. Make a note of it; and the stenographer is your secretary, note that too. I object to her taking this down." Do you recall Mr. Willett saying that? A. Mr. Willett objected to the stenographer taking the deposition and objected to the machine going.

Q. And would you say it was done in the manner I have just stated? Would you say it was substantially the same question? A. I don't think it is word for word what he said, but substantially he did object to it.

Mr. Willett: I think it would be relevant for Mr. Laughlin to ask the witness at what point of time this was said.

Mr. Laughlin: Your Honor, I contend I have a right to conduct my cross examination in my own way.

The Court: Yes, go ahead.

By Mr. Laughlin:

Q. I will ask you again, did Mr. Willett state: "You have a machine going, too." Do you recall saying that? A. Not in words like that.

Q. What did he say then? A. He made a statement that there was a recording device going and that it was not according to the proper rules; that it should be turned off.

• • •

[77] Q. Then I will ask you this, Miss, isn't it a fact—if you don't know you say so—in the U. S. District Court for the District of Columbia, with 15 courtrooms, 17 when we have 2 visiting judges, as we have now, every courtroom not only has a reporter, such as this reporter, but also recording devices going simultaneously. Do you know that? A. No.

The Court: I do not think that makes a bit of difference.

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[78] By Mr. Laughlin:

Q. Were Mr. FitzGerald and Mr. Willett very friendly? A. I wouldn't say they were friendly but they were not [79] quarreling.

Q. Was there any bitter exchanges between them? A. About Mr. Thomas's presence in the room, yes.

Q. And, did that become heated? A. Well, Mr. FitzGerald was quite upset, I would say, and asked Mr. Thomas in a very, very bad tone of voice to leave the room, and it made the atmosphere a little bit unpleasant for a couple of minutes.

Q. As a matter of fact, Miss, isn't it a fact Mr. FitzGerald said Thomas was not a party to the suit and did not belong there? A. Yes.

Q. And what did counsel Willett respond to that? A. He told Mr. Thomas to leave the room.

Q. Did he object to his leaving? A. Mr. Willett?

Q. Yes. A. No, he told him to go ahead and leave the room.

Q. Now, Miss, let me ask you this, did you, yourself, in connection with Mr. FitzGerald's visit to the candy store, did you, yourself, contact the FBI? A. No, I did not.

Q. Did you direct anyone else to contact the FBI? A. I did not.

Q. Were you present when Beverly Kline contacted the FBI? [80] A. I was not.

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[84] Q. Then when was it that you ascertained the voice you heard on that night was the voice of Mr. FitzGerald? A. In Mr. FitzGerald's office, the day the depositions were taken.

Q. Now, what characteristic was there about his voice on the 15th, in his office, when the depositions were being taken, that caused you to say it was the voice of the person who called on the 9th of February? A. I would say perhaps it was the tone. There is no doubt in my mind but what it was Mr. FitzGerald I talked to.

• • •

[85] Q. Well, Miss, let me ask you this, of course, you said you heard Beverly Kline testify at the depositions. You talked to her. Did Beverly Kline say Mr. FitzGerald said he was an agent of the FBI? A. No.

• • •

Q. Then tell us what you said to him and what he said to you? A. He just asked me a few questions. He asked me if I heard Mr. FitzGerald make a remark and I told him that I did not.

Q. Make a remark about what? A. About being with the FBI, and I told him I did not. He asked me what I

knew about it and I told him I saw Mr. FitzGerald come in the store. I saw Mr. FitzGerald go around to the end of the case and talk to Miss Kline and handed her a card and go back to the mail order case and leave a mail order, and paid Miss Kline and walked out.

Q. Now, Miss, let me ask you this, I have here Plaintiff's Exhibit 2 for identification. Have you seen that before? A. I have seen one like it.

Q. Have you seen this one? Do you see who it was made to? A. Yes.

Q. Did Miss Kline ever show that to you? A. Yes—well, I wouldn't say that one, but Miss Kline had a check from Mr. FitzGerald for $3.00, and I can't see well [88] enough to know whether that is $3.00 or what.

Q. It is a check made out to Beverly Kline and it says on it "Witness fees." A. Yes.

Q. Now, anyway, you recall when you saw it with your glasses on it did not say anything about the FBI on it? A. No, it did not.

Q. Now, Miss Witness, Plaintiff's Exhibit 1, it is a card. Do you recall Miss Kline showing you a card that was given by Mr. FitzGerald? A. That is right.

Q. It said, "Mr. Benedict F. FitzGerald, Jr., Counsellor at Law"? A. I believe so.

Q. This line, "National Press Building"? A. Yes.

Q. "Washington 4, D. C."? A. Yes.

Q. "Sterling 3-2057"? A. Yes.

Q. The card doesn't say anything about the FBI, does it? A. No.

Q. Miss Wooten, do you know Mrs. Cassidy? A. No, I do not.

Q. Miss Wooten, how long a period of time was Miss

Kline [89] away on account of illness this year? A. She was away a week.

Q. And what was the nature of the illness? A. She had been working under pressure down at her regular job at the Greyhound Bus Station and she was very, very nervous and they had this tragedy in the family which aggravated it.

Q. Do you know how long she was away? A. She was away a week or ten days.

Q. Miss Wooten, do you recall during the depositions that something came up about getting this card with Benedict FitzGerald's name on it in evidence? Do you recall there was something said about it by Mr. FitzGerald? A. I think Mr. FitzGerald asked for the card he had given to Miss Kline.

Q. He wanted it in evidence and Mr. Willett was objecting to it? A. No, Mr. Willett did not object to it.

Q. You are sure of that now? A. I think Miss Kline didn't have the card, I believe.

Q. Was a similar card shown—she didn't have that card, but was a similar card shown? A. No, if a card was shown it was—Mr. FitzGerald showed a card to Miss Kline and asked her if it was the same thing he had given her, I believe that's the way it happened.

• • •

[92] The Court: What about the motion you mentioned this morning, Mr. Laughlin?

Mr. Laughlin: Your Honor, maybe I spoke prematurely.

[93] We will now call the first agent of the FBI, Agent Higgins.

Mr. Willett: Did I understand Mr. Grangreco wanted to be called?

Mr. Laughlin: Yes. We will call the United States Attorney.

The Court: The Court will stand a short recess.

(Whereupon, the Court took a short recess.)

The Court: Mr. Laughlin, let me ask you a question. I understand someone has gone to Richmond and had subpoenas issued from the Richmond office.

Mr. Laughlin: I do not know where the subponeas were issued from. We do have some subponeas, blank subponeas.

The Court: I understand that.

I do not know whether it was you, but one of your counsel was informed that I had instructed the clerk not to issue subpoenas in blank until the matter had been taken up with me, and I did that, not particularly in this case but in other cases; but in the face of that, one counsel has gone to Richmond and gotten subpoenas. Now, I want to know if this is true.

Mr. Ahern: Your Honor, as I understand it, Mr. Harrigan and Mr. FitzGerald had obtained these subpoenas from Richmond prior to your statement. They had a bunch of subpoenas brought to our office.

The Court: I will take your word for it whether or not [94] any subpoenas were obtained from Richmond after your associate counsel was advised of our ruling.

Mr. Ahern: I am not sure they were obtained before your Honor's ruling. And that was the way I was so informed.

The Court: I want all those blank subpoenas surrendered that have not been used. I want them

returned. I can say to you it is not a rule that has been adopted for this case. It is a rule that I have enforced as far as the United States is concerned. The rule is, not that the subpoenas cannot be issued in blank, but when there is a request they be issued in blank, the counsel take it up with me. The reason is we have to have some way of accounting for the number of subpoenas that are out. My usual practice is to number the subpoenas so we will know how many are out, who has them, and I am perfectly willing to take your assurance that this was done before you knew of the ruling.

Mr. Laughlin: As far as I know, there has been no restriction, however, this is your Honor's court, and if this is your Honor's ruling we will conform to it.

The Court: There would not be any unreasonable restriction on any party by that ruling.

Mr. Laughlin: What would be the situation, assuming your Honor was not available on Saturday: what would we do in the case if your Honor was not available in the courthouse?

The Court: That same situation arises in any emergency. We have three judges in the district and we try to meet the [95] emergencies as they arise. However, you have answered my question.

Mr. Grangreco: Your Honor, before we get underway, I think it would be appropriate to argue on squashing these proceedings.

I might add, before we get underway, I have here today William Welsh and William Higgins. They are two amongst the three witnesses subpoenaed.

Robert Nagel is currently stationed and operating out of the El Paso, Texas office and it was physically impossible for him, of course, on such short notice to be present on the basis of these subpoenas. I want to make the court aware of this since these subpoenas were served yesterday, as I was told by one of the agents and returnable today at twelve noon.

The Court: What does the subpoenas say?

Mr. Grangreco: The subpoena, your Honor, commands William Welsh to bring in all records reflecting interviews or visits with one Beverly Kline and also known as Beverly Rebis, March, April, 1956 at the Greyhound Bus terminal, 1110 New York Avenue, Northwest, Washington, D. C., and visits made to her by any other agents during this period of time, also records relating to visits to B. C. Pendleton at the same address during the same period. He is the personnel director of the Greyhound line. These relate to complaints of said Kline alleging that someone represented himself as an F. B. I. agent at the Russell Stover Candy Store, 14th and F Streets, February [96] 9, 1956.

The Court: Are they all the same?

Mr. Grangreco: No, they are not, your Honor. I can pass all three of them up if you care to examine them.

The Court: All right.

Are you going to argue this, Mr. Ahern?

Mr. Ahern: Yes, I am, your Honor.

The Court: Stand aside, Mr. Grangreco, and let me see on what ground Mr. Ahern predicates his subpoenas.

Discussion.

Mr. Ahern: Your Honor, if I might argue inversely, I would like to take up first the subpoena of Agent Higgins.

Your Honor will note that the subpoena addressed to Higgins calls him here, and calls him here also to produce all records that he has regarding an interview with Mr. FitzGerald at the National Press Building, February 7, 1956.

First, your Honor, any claim as to Higgins, any claim as to privilege of Higgins, I think technically is premature. I think the orderly way is for Higgins to take the stand, but if any event there has been no validity as to privilege of Higgins. He is being called as a factual witness on a motion to admit Mr. FitzGerald. Now, essentially, your Honor, the motion to admit Mr. FitzGerald is a direct challenge to his fitness.

Mr. FitzGerald claims that when he went into the candy store he stated to the girl, "I have been to the F. B. I. I will see them again or they will be in here to see you later." [97] Now, in support of that statement which will ultimately be put in the record in the case we are going to have the corroborating testimony of a factual witness, Mr. Higgins; that Mr. Higgins was called at Mr. FitzGerald's invitation, and the agent with him Mr. Nagel, whom I understand is not now within the jurisdiction. It was prior to this visit in the candy store, and Mr. FitzGerald was concerned over what he considered not only the notorious relationship existing between Thomas and Cassidy, but he had information there had been a violation of the Mann Act.

Discussion.

We expect to show factually from the testimony of Agent Higgins that Mr. FitzGerald made these comments; that he conferred with him; that as a matter of fact he showed them exhibits; and, as a matter of fact, I think the testimony will show either Higgins or Nagel made a statement as to the wealth or at least the number of exhibits that Mr. FitzGerald had assembled for their inspection.

Now, let us analyze, your Honor, what the relevancy of their testimony is. It is obviously very material. It is obviously very material to Mr. FitzGerald's contention and which we contend is the correct contention, that he had the F. B. I. on his mind; this matter had upset him; he was concerned about this and made comments to the F. B. I.; and, when he saw this Thomas entering the candy store he went in to make this interview and he made this statement that he had been to the F. B. I.; and, therefore, the testimony of Higgins will be to corroborate the [98] testimony of Mr. FitzGerald. Your Honor, we will elicit through the testimony of Higgins the statement made by Mr. FitzGerald; the complaint he had to make and what exhibits he showed to them.

I suggest to your Honor there can be no claim here of any invasion of right of privilege; that there can be no detriment—the old argument—that informers are going to be disclosed or in some way confidential communications in the Attorney General's files will be divulged to the detriment of the Government because Mr. FitzGerald was a participant in these conversations, he talked and gave facts and made the complaint and that will be corroborated, and this is very important to Mr. FitzGerald.

The Court: What is your position on the other subpoenas?

Mr. Ahern: Now, with respect to the second subpoena—

The Court: Which one is that?

Mr. Ahern: Special Agent Welsh.

The Court: All right.

Mr. Ahern: With respect to Welsh, your Honor, that is admissible on another theory before we reach the question of privilege. We intend to without going into conversation—after Mr. Welsh is duly sworn—to elicit the dates that he entered interviewed this woman, Beverly Kline and/or Beverly Rebis. We intend to pinpoint the dates of the examinations. We contend this is for the purpose of impeachment.

Your Honor may recall she was propounded specific [99] questions on cross examination. First she said it was from five or six weeks later—I think she put it the latter part of March she was first interviewed; then upon other examination she was shown the letter dated February 21, and she stated it had to be between February 9 and February 21. We then had the testimony of Mrs. Wooten that she was not examined until sometime in the summer. Now, the testimony of Welsh, your Honor, would be on the issue of the credibility of this witness. She has been asked certain questions about what she reasonably could not be mistaken because that must have been a startling event for this girl when she was interviewed by an FBI agent. This will have a direct bearing, your Honor, in weighing this woman's credibility.

Discussion.

Now when we reach the question, if we do at a later juncture, when we go to the inspection of documents, then, your Honor, would at that point, meet the question of any privilege that might be asserted, but as to factual elements involved I do not think the general order or any of the cases covering privilege apply because they are being called as factual witnesses.

The Court: What about Mr. Nagel?

Mr. Ahern: Your Honor, I do not think I have him before the Court. I do not have service on him.

The Court: There is no return?

Mr. Ahern: I am not mistaken on him, am I?

[100] Mr. Laughlin: No.

The Court: You propose to show these things by the witnesses whom you have told me about?

Mr. Ahern: Yes.

The Court: I do not think, Mr. Ahern, that the evidence is admissible. I think that it is too far afield aside from the claim of privilege here.

Mr. Ahern: Let us for the moment face Welsh. It would seem to me—of course, your Honor has ruled and I will accept your ruling—but it would seem to me the testimony of Higgins would be crucial because, of course, at the proper time you are going to have to have the testimony of a reputable member of the Bar, but it is going to be reinforced by the fact—in other words, his contention of the true conversation between Kline and himself would be reinforced by the fact he was so incensed about this he had in fact made a complaint to the FBI and had shown them exhibits and it seems to me it would be corroborated by Higgins' testimony.

Discussion.

The Court: It would be self-serving declaration.

Mr. Ahern: Not if it was prior to the event.

The Court: Yes, it would be conformatory that he said the same thing before. No, I do not think so.

Mr. Ahern, you may have your exception.

Mr. Laughlin: Sir—

The Court: It may be understood you have made your offer [101] of proof, the witness would testify as Mr. Ahern said he would testify.

Mr. Laughlin: Has your Honor, in ruling, taken into consideration the decision of the Supreme Court?

The Court: Yes.

Mr. Laughlin: On the question of privilege, I mean that one.

The Court: Yes, on the question of privilege. I have read that.

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[102] Mr. Pratt: I am sure Mr. Laughlin is correct. I had my office call her yesterday afternoon, and at the time we called her office nobody answered the phone. Now, I do not know what that means.

The Court: I am going to take Mr. Laughlin's assurance, if he is willing to give it.

Do you think you have sufficient information to give me that assurance?

Mr. Laughlin: Yes, I will give you that assurance. I will go a step further and say the lady who gave me a statement about Miss Goebel's condition is a member of the bar and she knew of this hearing and she said in her opinion Miss Goebel was not able to testify and she told me why.

• • •

Discussion.

[103] Mr. Laughlin: His testimony will contradict the testimony of Kline as to visits of the FBI; that is, in our view it will do that. We have been told that it will contradict the testimony of Miss Kline; that agents came first to Mr. Pendleton and in turn came to her.

The Court: The fact that they came or did not?

Mr. Laughlin: In other words, we will show they did not come to Mr. Pendleton.

The Court: That will not take more than five or ten minutes?

Mr. Laughlin: No.

• • •

[105] The Court: That was stipulated yesterday that that would be the fact and that would be the ruling.

Now, gentlemen, I want to get back to the subpoenas. Have they all been surrendered?

Mr. Ahern: No, not as of this moment.

The Court: Will you do that?

Mr. Ahern: Yes.

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Mr. Grangreco: Your Honor, are the witnesses released?

The Court: Yes. The subpoenas are squashed and the witnesses are released.

We will recess until 2:15 p. m. this afternoon.

(Whereupon, the Court recessed.)

The Court: Mr. Ahern, do you have the three subpoenas you were arguing about?

Mr. Ahern: No. Your Honor has them.

The Court: I was wondering if you could have gotten [106] them back?

Mr. Ahern: I do not have them physically in front of me.

The Court: No, I have them.

Let me ask you about those for a moment.

Mr. Nagel was the man who was not served?

Mr. Ahern: Yes. He accompanied Mr. Higgins on the 7th.

The Court: To talk to Mr. FitzGerald on the 7th?

Mr. Ahern: Yes.

The Court: Now, what was the other witness's name?

Mr. Ahern: Welch.

The Court: And he was the one that called on Miss Kline?

Mr. Ahern: Correct.

The Court: And you wanted to know from him the date he called?

Mr. Ahern: Yes. In other words, there was Nagel and Higgins. We wanted them as to the 7th of February and their conference with Mr. FitzGerald and in Mr. FitzGerald's office. As to Welch, we wanted to examine him as to the dates when he visited and interviewed Kline.

The Court: And that was to contradict her testimony?

Mr. Ahern: Yes, as to the time when she said she was interviewed by the FBI.

[107] The Court: And that was all you wanted from him?

Mr. Ahern: There was the other matter when I intended to ask for the records of any other person he interviewed, and I knew I would run into a question of privilege; however, that was the primary

basis and it was to impeach the witness Kline as to the time she said she was interviewed by the FBI, and I was later going to ask Welch to give me the names of all other persons he interviewed in response to her complaint that Mr. FitzGerald said he was with the FBI, and I recognize there would be an objection and I was going to meet at that point.

The Court: I asked you before lunch about the subpoenas, why were they in Richmond?

Mr. Ahern: I do not know.

The Court: Who did get them?

Mr. Ahern: May I confer with Mr. Tankersley?

The Court: Yes.

Mr. Ahern: Your Honor, I have the subpoenas here. I think probably the only first-hand information I will be relying on will be that of Mr. FitzGerald.

The Court: You tell me.

Mr. Ahern: As I understand it, your Honor,—may I check the date—I understand, your Honor, in early February or March a request was made in the clerk's office here for blank subpoenas and we were informed blank subpoenas were not available and a letter was then written to the clerk's office in Richmond to [108] see if they could be supplied and they were received from the clerk's office in Richmond, a group of blank subpoenas. Now, I think that is correct.

The Court: Last year, was that?

Mr. Ahern: This year.

The Court: Who took it up with the clerk?

Mr. Tankersley: Your Honor, as I remember, no request was made of the clerk here this year. As

I understand it, the request had been made some time in the past and there had been difficulty in obtaining them and they wrote the letter, as I understand it, in January or February to Richmond.

The Court: Now, who wrote the letter?

Mr. Tankersley: Mr. FitzGerald, your Honor wrote to the clerk of all three divisions of the district.

The Court: At that time wasn't Mr. FitzGerald's case pending?

Mr. Tankersley: That may or may not be. He was acting as chief counsel. He might have wanted them to use in taking depositions in Washington, D. C. or Maryland, and there are many times you have the secretary write the letters, might write up to Massachusetts, and I think at the same time simultaneously writing to Texas and Florida, and she typed out another letter sending it to the chief clerk in Richmond. It is a clerical function and has nothing to do with the practice of law. He didn't use them, and certainly when they were used [109] in association with resident counsel, and I think some years of experience he has written around the country to get them many times.

The Court: Yes, but I want to know why the application was not made first here to the clerk, and why it was not brought to my attention.

Mr. Harrigan: Well, I think Johnson is properly—

The Court: Was it made with the knowledge if the request had been made here it would not have been granted?

Discussion.

Mr. Harrigan: No, I do not think it was made with any particular knowledge.

The Court: I understand the request had not been turned down here at that time?

Mr. Harrigan: That is right, your Honor.

The Court: Then why was the request directed to Richmond and not here?

Mr. Harrigan: Well, I would think that was the proper place. We had not been turned down befor. There had been some discussion and, as matter of course, I write to the district court and I address the letter to the clerk.

The Court: Not when a case is pending in another division. You do not write to some other office.

Mr. Harrigan: I did not know the divisions were official, your Honor, I thought, according to Martindale and Hubbell—

[110] The Court: They are fixed by rules of the court. I just do not like the appearance of going to some other office for subpoenas when the case is pending in a different office.

Mr. Harrigan: Well, I think it is a clerical function, more or less, and you do that without thinking.

The Court: I do not want it done any more, any processes issued in the case. I want the application made for it right here.

Mr. Harrigan: We will certainly comply with your ruling, your Honor.

Mr. Laughlin: Your Honor, it is unfortunate this thing arises at this time in the case and I regret your Honor has seen fit to make this statement that you have because I cannot help but feel, feeling

as you do as to this, and I know nothing as to what took place on these subpoenas—I have probably a couple of hundred in my office out of the district court—I am just sorry your Honor made that statement. I just do not see how, if you have that feeling, how you can erase that from your mind when it comes time for you to determine whether Mr. FitzGerald should or be permitted to practice. As I understand admission—for instance, I don't suppose I could be admitted in your court generally because I am not a resident, although I am a member of the fourth circuit, but I understand the admission here from another jurisdiction is only for a [111] specific case. Now, I just regret your Honor has seen fit to make that statement at this time because I have tried to keep, to bring to the attention of your Honor evidence that I thought would be helpful to you so when the time came your Honor would not be swayed by anything else. The practice followed, your Honor, in the District of Columbia is that we do not attempt to communicate with the judge by telephone and we are told we should not even write a letter to the judge without notifying the other side. Without boasting, your Honor, I have tried many cases and I have the good will of every judge.

The Court: I do not want to go into that, but I do not want any applications made for process in this case.

Mr. Laughlin: I assure you I will make none.

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J. H. Thomas, for Deft., Cross.

J. HARRY THOMAS was called as a witness and after having been first duly sworn was examined and testified as follows:

• • •

[118] Cross Examination by Mr. Laughlin:

Q. Mr. Thomas, what is your employment? [119] A. I am a salesman.

Q. For whom? A. Self-employed.

Q. Well, what are you doing, where do you work? You say you are self-employed. First, where do you live? A. I live on a boat.

Q. On a boat? Where is that? A. On the Potomac River.

Q. And how long have you lived on that boat? A. Well, periodically I stay there. When it is cold I rent a room. I have lived in Falls Church and in the District. I have to change my address often so I am not followed by Mr. FitzGerald everywhere I go.

Q. Now, what is the name of the boat? A. The BUDGET BUSTER.

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Mr. Laughlin: Your Honor, may I say this, he has made the statement that Mr. FitzGerald represented himself as an agent of the FBI; therefore, wouldn't that open the door to show that Mr. FitzGerald had been going to the FBI because of his escapades and what Mr. FitzGerald considered was a violation of the White Slave Act, transporting this woman across a state line?

The Court: You can ask him that, if you know that.

By Mr. Laughlin:

Q. Mr. Witness, do you know that Mr. FitzGerald has been to the FBI with respect to you? A. No.

• • •

[122] Q. Now, has any FBI agent ever contacted you? A. Yes.

Q. When? A. Oh, I guess it was in the spring of last year.

Q. 1956? A. Yes.

Q. And who was the agent? A. Mr. Welch.

Q. What was it about? A. I called him to advise him about Mr. FitzGerald and to stop him posing as an agent to get evidence against me illegally.

The Court: I think you are going far afield again. Let's stick to the depositions.

Q. Now, Mr. Witness, will you give us a date that you made the report to the FBI? A. I can't do it right now, I don't remember.

• • •

[123] Q. Now, Mr. Witness, you did go to the candy store on February 9th? A. Yes.

Q. Why? A. To buy some candy.

Q. For whom?

Mr. Willett: Your Honor, again I was restricted to what took place at the deposition.

[124] The Court: That is conceded.

Mr. Laughlin: No, I want to get it from him.

Q. For whom were you going to buy the candy? A. Miss Cassidy.

Q. Who was Mrs. Cassidy? A. A friend of mine.

Q. The woman whom you were living with? A. No.

Mr. Willett: Your Honor, I object.

The Court: The objection is sustained.

Q. Did you buy some candy? A. I ordered it.

Q. And do you know who waited on you? A. Yes.

Q. Who? A. Miss Kline.

Q. Did you know her before that time? A. No.

Q. Now, have you seen her since? A. Yes.

Q. Do you recognize your writing, sir? A. Well, that looks like printing. I suppose it could be.

Q. Do you have any doubts about it? A. It's hard to verify. It is undated.

Q. You would doubt it? [125] A. I might, yes.

• • •

[126] Q. Mr. FitzGerald didn't say that he was an agent of the [127] FBI at any time, did he? A. No.

• • •

Q. Now, that lawsuit was not against you, was it?

Mr. Willett: What lawsuit was that?

Q. The deposition says, "Thomas v. Cassidy", isn't that it? A. Yes.

Mr. Willett: What difference does that make. He stated he was at the Willard Hotel.

The Court: He has answered the question.

[128] Q. It was Thomas v. Cassidy, wasn't it? A. Yes.

Q. Is Mrs. Thomas your wife and the mother of your child? A. Former wife.

Q. All right, tell me this, did Mr. Willett hire you? A. No.

Mr. Willett: Hire for what purpose? I do not think that is a complete. Did I hire him for what purpose?

Mr. Laughlin: He said that you did not.

The Court: I think the question is too vague. Objection is sustained.

By Mr. Laughlin:

Q. Did Mr. Willett ever represent you, sir? A. Yes.

Q. In what capacity? A. That was a contempt proceeding in court against me.

Q. In court? A. Yes, and I consulted Mr. Willett about it.

Q. And when was that, sir? A. Oh, last spring, I guess.

Q. When you say last spring, was that the spring of 1956? A. Yes.

Q. Can you tell us about what month? A. I don't know exactly what month, I don't remember.

Q. Did he represent you in February of 1956? A. He may have.

• • •

[129] Q. How did you know a deposition was going to be taken, sir? A. I had bought this candy and I was called by Mr. Willett's secretary the next day saying that I was followed and consequently that alerted me—the tactics Mr. FitzGerald was employing.

Q. Mr. Willett's secretary, you say, called the next day. Now, up to that time had you had any contact with Mr. Willett? A. I had talked with him.

Q. Because he was the attorney for Mrs. Cassidy? A. I don't know what the reason was for.

Q. Do you know he was the attorney for Mrs. Cassidy? A. Yes.

Q. When did you find it out? A. I can't tell you that, I don't know the date.

Q. You had known it for some time? A. Yes.

Q. Tell me this then, you got a call from Mr. Willett's secretary and she said you were being followed; is that right? [130] A. I think she said precisely that.

• • •

[131] Q. Well, Mr. Witness, you are testifying about matters that took place February 15, 1956. You do remember what took place at the depositions, don't you? A. That's right.

Q. But you do not remember when you engaged Mr. Willett? A. No, it was something that came up very recently about that. I would remember it.

Q. Tell me this—refresh your recollection—what was the nature of the content? A. Oh, that was some question of the depesition that Mr. FitzGerald wanted and I was improperly served.

Q. In this cause? A. In the matter of Cassidy and Thomas case. He had about fifteen depositions taken in Maryland considering the same matter.

Q. Do you remember, Mr. Witness, did not Mr. Willett file a suit in your behalf against Mr. FitzGerald? A. Concerning what?

Q. Did you file a suit against—

Mr. Willett: Your Honor, I have been sitting here patiently for ten minutes, and we are certainly going into things other than what took place at the depositions.

[132] The Court: Yes, we are going too far, Mr. Laughlin.

Mr. Laughlin: Your Honor—

The Court: You can call him as your witness.

Mr. Laughlin: Yes, and we will certainly do that if he stays within your jurisdiction. Of course, if he goes out on that boat and out in the river, but we have been told he will be available.

The point I am making now, I think we have definately established this man has animosity against

Mr. FitzGerald: We have, I submit, a right to go into this—

* * *

Q. Mr. Witness, did you file a suit against Mr. FitzGerald?

Mr. Willett: Your Honor, that is the same question.

The Court: I will let him answer it.

A. I filed a suit at one time against him.

Q. For what? [133] A. Libel and slander.

Q. Now, Mr. Witness, was that based—

The Court: Now, I think that is sufficient, Mr. Laughlin.

I understand you will proffer or tender proof showing the contents of the complaint.

* * *

[135] Q. Mr. Witness, yet me ask you this, at any time during that deposition did Mr. FitzGerald leave the room where the depositions were being taken? A. I don't know during the depositions, but he went out to get Miss Goebel at Mr. Willett's request.

Q. I will confine it to the time you were personally present. Let me ask you this, isn't it a fact Mr. FitzGerald left the room with Mr. Willett? A. That I don't know.

* * *

[136] Q. Now, you said you were shown something in the depositions, Mr. Witness, and you said that was mild at the time you were told to leave. Do you recall what page it was, Witness? A. I believe page 5.

Q. You are familiar with this, is that right? A. He just presented it to me.

Q. Directing your attention to page 4, did Mr. FitzGerald say, "Oh, pardon me, Mr. Willett is right, Mr. Thomas is not a defendant in this action. In view of the fact he is not a party, maybe we ought to ask him to leave since he is not a party. [137] I wonder why he came. He had me confused. Do you have any objection, Mr. Willett, if we suggest that your client, Mr. Thomas, leave because, as you have pointed out, he is not a party in the proceedings nor do we have any deposition scheduled for him today."

Did Mr. FitzGerald say that? A. No, he didn't say that. He threatened to ruin me in Maryland, and he would have been much more drastic than that.

Q. What did he say? A. I can't tell you exactly. I think he stood up after Miss Kline accused him of being an FBI agent and ordered me out of the room.

• • •

[138] Q. Let me ask you this, Mr. Witness, on page 5, did Mr. FitzGerald say this, "I think he ought to leave because he is not a party and he was not invited to attend. I have no desire to have him here at this time. Although I have no personal animosity toward him. This is a small room. The air is congested. Mr. Thomas, you will find a reception room just behind the door and there are some magazines that you might want to look at."

Did Mr. FitzGerald say that? A. No, it is too mild for his type of statement.

Q. Well, what did he say? A. As I said before, he ordered me out of the room. Just what he said, I can't say except it was in a violent nature.

Q. Is that because it was so long ago you can't remember the words? A. That would be one of the reasons, I would think.

Q. Mr. Witness, let me ask you this, at that deposition [139] was there some picture of you exhibited? A. Yes.

Q. Was this the picture that was exhibited of you? A. It looks like it, it may be. It was about that size, passport size. It could be it.

Q. Now, tell me this, were you in the room of the deposition when something was said about Mr. FitzGerald's business card? A. I don't recall.

Mr. Laughlin: Your Honor, I think that would conclude the examination other than our proof.

Your Honor, could we agree at this time on a time for taking of the deposition of this witness and have the assurance of counsel that he will be present? And, your Honor, could that deposition be taken in the District of Columbia?

Mr. Willett: This case is in Virginia.

Mr. FitzGerald has brought a personal suit of some several hundred thousand dolkars, I have read in the papers, against me and I am confident they are doing everything they can to get me to go to the District to make service, and for that reason I refuse o let any depositions be taken outside this jurisdiction.

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[147] CARLYSLE B. PENDLETON was called as a witness and after having been first duly sworn was examined and testified as follows:

* * *

[148] Direct Examination by Mr. Laughlin:

Q. Will you give us your name, please? A. Carlysle B. Pendleton.

Q. What is your occupation? A. I am manager of the Greyhound Terminal in Washington.

Q. Do you know a Beverly Kline? A. Yes.

Q. Is she connected with your company? A. Yes.

Q. How long has she been so working or connected? A. Since November, 1951.

Q. In the year 1956, in what capacity? A. Ticket agent.

Q. Now, directing your attention, sir, to February, March, and April of 1956, did an agent, an FBI agent or agents come to you and interview you? A. No, not to my knowledge, sir.

[149] Q. Now, Mr. Pendleton, do you have records to show whether you carry her as Beverly Kline or Beverly Rebis? A. We carry her as Beverly Kline.

Q. Did she ever give you any different name? A. Not up until two weeks ago.

Q. What happened two weeks ago? A. She came into the office and told me about the situation that is present now and knew most likely it would get back to us and she thought she would come in. She came in and spoke to me about it.

Q. You have the records that reflect any of her absences from duty this present year, 1957? A. Yes.

Q. What do they reflect? A. Just a vacation.

Q. What period of time? A. I would have to look at it.

Q. You may look at it. A. Her last absence, absence in February was 2 to the 14th, 1957, from 2 to the 16th, 1957, inclusive.

Q. That is all it reflects? A. All in 1957, yes.

Q. Now, Mr. Witness, let me ask you this, having in

mind February, March and April, of that year, 1956, did you accompany any agent of the FBI during those months to Miss Kline? A. No, not to my knowledge, sir.

* * *

[152] Mr. Laughlin: The next witness will be the marshal.

The Court: Now, gentlemen, you are calling the marshal. Can't you stipulate as to what he would say? I prefer not to have an officer of the court to take sides if it can be avoided.

Mr. Willett: We are not interested in Mr. Thomas at all. We know of his fine reputation and we have no questions.

The Court: Can't you stipulate that if Mr. Thomas, the marshal, took the stand he would testify so and so?

Mr. Willett: We would be more than pleased to stipulate if he took the stand Mr. Thomas, being a man of good reputation, would say he is not the man that handed the deposition to Miss [153] Kline.

Mr. Laughlin: That he did not go to the store at the time testified to on the stand. That is so stipulated.

The Court: Do you know that is what he would testify?

Mr. Laughlin: No, I did not discuss it with him.

The Court: It's just a preference and I think it is a mistake having a court officer take the stand on one side or the other.

Mr. Laughlin: I agree with that. I will call him in here and see what he would say.

Mr. Thomas, if you were asked on the stand if

you were the one who delivered this transcript of the deposition to Witness Kline, what would be your answer?

Mr. Thomas: No, sir. I did not.

Mr. Laughlin: My other question was: He was not at the address of the Russell Stover Candy Store at the time testified to by the witness, Kline.

The Court: Your answer would be—?

Mr. Thomas: Yes.

The Court: Will you stipulate that would be the testimony of the marshal?

Mr. Willett: Yes.

Mr. Laughlin: We would like to call counsel Willett as a witness now.

Mr. Willett: Am I required to take the stand as counsel in the case?

[154] The Court: What is the nature of your inquiry?

Mr. Laughlin: I want to ask Mr. Willett to testify as he has laid considerable stress on this record, the recorder in this deposition. I want to ask him about that. I also want to ask him about a conference he had with Mr. FitzGerald when they withdrew from the room at the time of the deposition.

Mr. Willett: What is the materiality of that.

The Court: How would that come into this court?

Mr. Laughlin: Your Honor, he devoted many questions to the witness, Kline, and Wooten and I believe to the witness, Thomas, as to that recorder being in operation. I want to ask Mr. Willett about that and get from him on the witness stand as to whether a recorder was in operation.

Mr. Willett: Your Honor, I submit as counsel in the case, I don't believe I should be required to take the stand as a witness, and I would not voluntarily take it, unless you order me to do so.

The Court: I would not want to subject any counsel to do it unless it was indispensable.

Mr. Laughlin: Your Honor, would counsel Willett stipulate that the recording device was in operation throughout the deposition?

Mr. Willett: Your Honor, I will not make any stipulation in this case. I am not a witness. I am an attorney. I am not going to make any stipulation as a witness that might [155] prejudice my client. I have never heard of such a thing before. I have never been called on to do it in any other case and I have known of no lawyer on the opposite side who asked for such a thing.

Every opportunity is available to them. We have no evidence we are trying to hide or surprise them with. We have tried to be very fair to them, and every opportunity is available to them to ascertain or present any evidence they have.

Mr. Laughlin: Your Honor, suppose we withdraw the request now, that Mr. Willett take the stand, and when all evidence is in I will renew it, and at that time your Honor can rule in face of all the evidence whether the request I make is proper or not.

* * *

[158] The Court: You spoke of some character witnesses.

Mr. Laughlin: Yes, your Honor, I may have the character witnesses.

Discussion.

The Court: Can there not be a stipulation covering that; that if such a person appeared he would testify thus and so?

Mr. Laughlin: That could well be. In other words, we will have certain names and I think if they personally took the stand they would testify that Mr. FitzGerald's reputation first for veracity is good; that his character and standing as a member of the bar is good.

The Court: Of course, you would have to have the other side to agree.

Mr. Laughlin: Yes, I understand.

I don't have the names, your Honor. I could give you the names of Congressman McCormick and Senator Kennedy of Massachusetts.

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[159] Mr. Pratt: I do not know what my relationship is in respect to Miss Kline and Miss Wooten, I represent the Russell Stover Candy Company.

Mr. Ahern: Has he filed his appearance?

Mr. Pratt: Yes, I have and I have been instructed by the Company to appear here with their employees.

[160] Mr. Ahern: Is the appearance in behalf of the defendant Cassidy?

Mr. Pratt: No, it is not.

Mr. Ahern: I don't see where he can file an appearance in this case.

Mr. Willett: Now, I would like to know if Mr. Ahern and Mr. Laughlin are attorneys for Mrs. Thomas as well as Miss Goebel?

Mr. Ahern: We are coming in for Mrs. Thomas, the plaintiff.

Mr. Willett: Mr. Laughlin, I thought you were here on behalf of Goebel?

Mr. Laughlin: No, no.

When I got that call—Miss Goebel called me yesterday and I went down, and at the time I asked you to come and you said you couldn't but we are here for Mrs. Thomas. We want to see Mrs. Thomas through on this.

Mr. Ahern: I think for the purpose of the record, in view of our litigation where we have the Russell Stover Candy Company as a party defendant, I think we should have appearance of record that Mr. Pratt therefore is entering his appearance in behalf of the defendant's case so at a later time the proper records may be produced against the Russell Stover Candy Co.

Mr. Pratt: I have no objection.

The Court: All right.

[161] The Court: I would like you to have the letter being written to the clerk in the record for the subpoenas.

Mr. Ahern: I understand there has been a search made. As I understand you want the letter that was addressed to the clerk.

The Court: The clerk may have it. If it is agreeable, I will ask the clerk and it may save you from making a search.

Mr. Ahern: That is not going in as an exhibit in this case? What is the relevancy as far as the present motion is concerned?

The Court: I think it has something to do with the case. I think it ought to be since it was brought out here in discussion.

Discussion.

Mr. Laughlin: Your Honor, the only trouble, we are not prepared to meet that, when this hearing opened, now, of course, it is conceivable we may have to offer testimony on that [162] point.

The Court: Let us get the letter first and I will hear you on it.

Mr. Ahern, let me ask you something else, you very kindly loaned me your copy of the complaint or amended complaint in the District of Columbia court in FitzGerald against Willett and others.

Mr. Ahern: Yes.

The Court: I wonder if you are willing for me to retain that and put it in the file in the case. I have noted on here it was received yesterday. Can you tell me the date it was filed?

Mr. Ahern: The original suit your Honor?

Mr. Laughlin: If I can have your calendar, I think I can tell you.

March 11th, your Honor. That was the date it was handed to the clerk in Washington.

Mr. Ahern: Yes.

Mr. Laughlin: And the amended complaint was filed March 22nd.

The Court: The amended complaint, March the 22nd?

Mr. Laughlin: Yes, on March the 22nd.

The Court: I have made notation of the dates on here.

Mr. Laughlin: Your Honor, Mr. Willett made a statement yesterday to the effect he had written a letter to Judge Holtzoff [163] on the matter. I wonder if we could have a copy of that letter?

Mr. Willett: Your Honor, what would be the relevancy of that letter to this case? This action is Thomas v. Cassidy. I have no objection to it. I would like to know the purpose of it.

Mr. Laughlin: Of course, your Honor, Mr. FitzGerald's letter or whoever wrote the letter, is going to go into the file.

Mr. Willett: I do not see how anything that pertains to the District is relevant in the proceeding, Thomas v. Cassidy.

I learned a minute ago that Mr. Laughlin is now counsel for Mrs. Thomas. I sat here two days thinking he represented Miss Goebel. I think this case has been complicated enough without this other suit coming in at this particular time, $700,000, filed in the jurisdiction of Washington and not in Virginia.

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[1] **Depositions of April 8, 1957.**

U. S. Courtroom, Alexandria, Virginia,

Depositions of Pauline E. Goebel, a witness of lawful age, taken on behalf of the defendant in the above-entitled action, and depositions of James J. Laughlin, Milton Weinberg, and Benedict F. Fitzgerald, witnesses of lawful age, taken on behalf of the plaintiff in the above-entitled action, wherein Irene R. Thomas is the plaintiff, and Billie Smith Cassidy is the defendant, pending in the United States District Court for the Eastern District of Virginia, Alexandria Division, pursuant to notice, before Hon. Albert V. Bryan, Judge, United States District Court, for the

Eastern District of Virginia, Alexandria Division, in U. S. Courtroom, U. S. Courthouse, Alexandria, Virginia, at 10:00 a. m., Monday, April 8, 1957.

[2] Appearances:

James J. Laughlin, Esq., Albert J. Ahern, Laughlin & Ahern, National Press Building, Washington, D. C. appearing on behalf of the plaintiff.

Hugh R. Tankersley, Esq., 126 Poplar Street, Fairfax, Va., Edward D. Harrigan, Esq., 705-18th St. N. W., Washington, D. C., appearing on behalf of the plaintiff.

John R. Willett, Esq., John Pratt, Esq. appearing on behalf of the defendant.

(Present on behalf of Miss Pauline E. Goebel, Thomas Wadden, Esq., Office of Edward Bennett Williams, Hill Building, Washington, D. C.)

[4] PROCEEDINGS.

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[6] PAULINE E. GOEBEL a witness of lawful age, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Willett:

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Q. Are you the same Pauline Goebel who transcribed the [7] depositions of Beverly Kline and Mae Wooten taken on February 15, 1956, in the office of Benedict FitzGerald? A. Yes.

Q. Will you please state when and by whom you were requested to take these depositions on February 15, 1956? A. I was called on by Mr. Benjamin FitzGerald, Benedict FitzGerald to swear in the witnesses. I was not asked to take the depositions.

Q. Did there ever come a time when you were requested to take the depositions? A. When I went into swear in the witnesses, I was about to leave, and Mr. Willett, attorney on the other side said that he would not permit me to leave without taking the depositions. And I was asked if I would remain and take the depositions.

Q. As I understand you were called in for the sole purpose of swearing the witnesses? A. That's correct

Q. Is it your statement that at no time did you leave the room on February 15, 1956? A. No. I didn't leave the room.

Q. You remained through the entire proceedings? A. Yes.

Q. Would you please state if on February 15, 1956 anyone made any objection to Mr. FitzGerald's secretary taking the [8] depositions? A. Yes, Mr. Willett opposed Mr. FitzGerald's secretary taking the depositions.

Q. What was the conversation that took place at that time? As best you recall? A. I am afraid I don't recall.

Q. Do you know whether or not Mr. FitzGerald made any objection to the fact that his secretary couldn't take the deposition? A. No.

Q. Is your answer no or that you don't recall? A. I don't know that he had made any objection to his secretary taking them.

Q. Had you ever been called upon by Mr. FitzGerald at any time prior to February 15, 1956 to take any depositions for him? A. Never.

Q. This was the first time? A. Yes.

Q. Will you please state whether or not you remained in the room on February 15, 1956 in the office of Benedict FitzGerald at the time all the depositions were being taken? A. Yes, I remained in the room.

Q. Would you please state who was present if you know? A. Mr. FitzGerald, Mr. Willett, the two witnesses, Mr. [9] Harrigan, and Mr. Thomas, the defendant.

Q. What were the names of the witnesses if you know? A. Beverly Kline and Mae Wooten.

Q. Anyone else present? A. Not to my knowledge.

Q. I believe you stated Mr. FitzGerald's secretary was there? A. Oh, yes.

Q. Do you know what her name was? A. Bernice Ruth as I recall.

Q. Would you please state at what point you started recording what was being said at the time these depositions were taken? A. State when I started making a recording.

Q. Yes. A. Well, promptly.

Q. Do you know whether or not Mr. FitzGerald's secretary was also taking notes at the same time you were? A. She started, but she didn't continue.

Q. Do you know whether or not you transcribed any of the discussion that took place between Mr. Willett and Mr. FitzGerald relative to Mr. FitzGerald's secretary not taking any notes? A. No.

Mr. Laughlin: Your Honor, the objection I am going to make is this witness now is called by Mr. Willett. I don't [10] believe that there should be any leading questions because after all, Mr. FitzGerald's right to practice is at stake here. I think the question should not be leading. I object on that ground.

The Court: The objection is sustained.

By Mr. Willett:

Q. Would you please state if after you transcribed

ose depositions on February 15, 1956, if you had any con-
rsation with Mr. FitzGerald after that date? A. Very
riefly, but as I recall, he didn't anticipate they would be
eeded, or used.

Q. He didn't anticipate? When did he contact you
fter February 15 and tell me to the best of your recollec-
ion what he said? A. Well, I was asked to translate my
otes, transcribe my notes and he was out of town a great
eal of the time, so I left a copy on his desk. Later on he
old me that we would go back to them, he didn't think they
ould be too necessary.

Q. When did you transcribe them and when did you
ave a copy on Mr. FitzGerald's desk? A. I transcribed
ny notes about three months after the trial, after the
earing and left a copy on his desk.

Q. Did you furnish anyone else with a copy? A. No,
didn't.

Q. At any time on February 15, 1956, did John R.
Willett [11] indicate to you that he wanted a copy? A.
es. Mr. Willett may have called me but I do think I had
letter asking for the copy but my notes were not com-
lete.

Mr. Laughlin: Your Honor, as I understood, may-
be I misunderstood her response. I think we ought
to know whether Mr. Willett called her or whether
a communication came to her by letter. I under-
stood she implied one of the two.

The Court: Can you recall which it was, Miss
Goebel?

The Witness: No, I don't recall.

By Mr. Willett:

Q. I will go back to February 15. At any time on Feb-
ruary 15, 1956, did John R. Willett at the time you were

recording these depositions make a statement to you tha he desired a copy and would pay the prevailing price fo them? A. Yes.

Q. Why is it if you furnished Mr. Fitzgerald a copy of the notes some three months after that, you didn't furnish John Willett a copy or send a copy to the Court? A. Because I was not in a position to take the deposition a hundred percent on my own. They were not complete enough.

Q. Why do you make that statement? Did you get help from anyone else? A. If you will recall, there was a recording going on at the time of the hearing, and I not being a Court Reporter, [12] had never taken a deposition. And as a secretary, was not qualified to take a deposition, so I was relying on that recording.

Q. Is it your statement that you used the recording? What recording device are you referring to first of all? A. A cylinder that was in the room at the time of the deposition.

Q. From whom did you get that cylinder, if you know? A. I never retrieved the cylinder.

Q. Were you ever exposed to the cylinder? A. No.

Q. Did you get any assistance from the cylinder? A. No.

Q. I understood you to say that you didn't transcribe these by yourself. Is that correct? A. I transcribed the ones that I had taken. But there was so much confusion that I didn't know one attorney's voice from another nor the questions nor the answers.

Q. At the time you finally finalized the depositions that you turned into the Court, did you have the assistance from any other person or any other instrument to assist you

together with your notes? A. I must admit I did not prepare the copy that came to the Court.

Q. You didn't prepare it? A. No.

[13] Q. Can you state who did? A. No, I have no idea.

Q. Did you at any time sign a certificate as a Notary Public and make a certification to the Court, I invite your attention to a statement alleged to have been signed by Pauline Goebel, certification: "I, Pauline Goebel, the officer before whom the foregoing deposition was taken do hereby certify that during the past 30 days I have made repeated efforts to locate the witnesses Beverly Kline and Mae Wooten and to have them read, correct and sign the foregoing transcript of their test mony. In the case of Beverly Kline I have been advised by Mae Wooten, and therefore believe that Beverly Kline has not been and is not now available because of the fact that she is ill, is under the care of a physician, and is suffering from a mental disturbance and that only during the past week her condition was aggravated by an act of suicide committed by the member of her family. In the case of Mae Wooten, I have been advised and therefore do believe that she has not been and is not presently available because she does not have an accurate memory as to what took place on the occasion of the deposition proceeding and that she has been advised to refrain from reviewing the transcript until she has had an opportunity to confer and be advised by attorney John R. Willett, counsel for the defendant who according to report issued by the latter's office is and has been for the past 30 days absent from Virginia. [14] Signed Pauline Goebel."

Did you make that certification to the Court? A. I signed that certification.

Q. Did you ascertain the contents of that certification yourself, the information pertaining to Miss Kline, Mrs. Wooten and Mr. Willett? A. Will you ask that question again?

Q. Yes. Did you come about the information contained in this certification yourself personally or did someone else help you get this information? A. I personally called on Mae Wooten. I made a telephone call to the office to determine that.

Q. So is it your statement that everything contained in this certification on page 39 is an accurate statement that you gathered the information yourself? A. With the help of Mr. FitzGerald.

Q. What did Mr. FitzGerald do to help you? A. He prepared the statement and brought it in for me to read and consider. I agreed that it was a correct statement.

Q. But Mr. FitzGerald prepared the statement, and you signed it. A. That's right.

Q. Did I understand you to say that you did not personally send these depositions to the Court? A. I personally mailed them to the Court.

[15] Q. Did you prepare all these depositions and type them yourself? A. No, I did not.

Q. Do you know who did type them? A. No, I do not.

Q. At any time were they brought in for signature? A. They were brought in to me with the idea that I would look—I would read one over, one copy. I was to have Mae Wooten and the other young lady come in and read them with the ideas of signing them if they were accurate according to their estimation.

Q. And whom did you say brought those in to you to sign? A. Mr. FitzGerald.

Q. I invited your attention to the certification on page 40. I ask you to state if you signed your name to this statement, "I Pauligе Goebel, the officer before whom the foregoing depositions was taken, do hereby certify that the witnesses whose testimony appears in the foregoing deposition were duly sworn by me and that said deposition is a true record of the testimony given by said witnesses. That I am neither attorney nor counsel for nor related to or employed by any of the parties to the action in which this deposition is taken and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action. Signed Pauline E. Goebel, Notary Public, D. C. My [16] commission expires May 15, 1961."

Did you certify to that certificate? A. Yes.

Q. How could you certify that this was an accurate transcription if you didn't transcribe it yourself by your own statement here today?

Mr. Laughlin: Your Honor, I am objecting. This is his own witness. Now he is attempting to contradict his own witness. He called this witness. He is bound by his answers.

The Court: I think the question is proper.

By Mr. Willett:

Q. Do you understand the question? A. You asked me if I certified it.

Q. Yes. You answered that you did. I asked you, I believe my question was how could you certify that this was an accurate transcript of these depositions if you didn't prepare the notes yourself? A. Because I read it over and it appeared to be what I recall as having been the testimony taken a year ago.

Q. Now you didn't say in your certification that it appeared to be or that it represented a similar transcript, did you? You certified that this is an accurate transcript. A. Yes.

Q. After you proposed this draft of your notes some three months after this deposition was taken on February 15, [17] 1956, did you see those notes again until such time as this deposition came to you for your signature? A. I retained a copy, but I didn't read them again.

Q. Is it your statement that you prepared the transcript of your notes turned that over to Mr. FitzGerald, then the next information you had pertaining to these depositions was when the finished product was brought in for you to sign? A. Yes.

Q. I invite your attention to approximately three weeks or a month after February 15, 1956. I ask you to state if you had any conversation with Mae Wooten in the Russell Stover Candy Store relative to these depositions? A. I dropped in to the store one particular day, and spoke a minute with Mae Wooten.

Q. Would you please state whether or not Miss Wooten or Mrs. Wooten asked you when these depositions would be ready for her to sign? A. She inquired about them.

Q. What answer did you make, if any? A. As a recall, I told her I wish they would forget the whole matter.

Q. Did you say anything else to the best of your knowledge? A. I mentioned the fact that my notes were not too complete.

* * *

[18] Q. I ask you to state, Miss Goebel, if you stated to Miss Mae Wooten that you didn't get all of the things that were said that day that people were talking so rapidly

that you missed some of it, and that you wished you hadn't been asked to take them in the first place? [19] A. I don't recall that.

Q. But you do recall saying to her that you didn't get it all, and you wished you hadn't been asked, is that what you said here today? A. I don't remember repeating about "hadn't been asked".

Q. Pardon me? A. I didn't remember repeating that I said I wished I hadn't been asked.

Q. You don't deny that you told her you didn't get them all? A. Yes, that's true.

Q. That is a true statement? A. Yes.

Q. How many times did you see Mr. FitzGerald from February 15, 1956 to the time you transcribed these notes or the notes were transcribed and you signed them and sent in to Court in 1957 pertaining to this particular proceeding? A. Not very many times.

Q. Could you tell me whether it is one or two, 10 or 15, 30 or 40? A. I said or I would say two or three.

Q. Two or three? A. Yes.

Q. Did you ever have occasion to go into Mr. FitzGerald's office to play the cylinder back yourself to listen to any [20] cylinder? A. No.

Q. At any time did Mr. FitzGerald go in to your office and request you to get in touch with Mae Wooten or Beverly Kline or Mr. Willett relative to signing these? A. Mr. FitzGerald asked me to telephone to the girls, and ask them to come in and proofread them.

Q. When was that if you know, what month and what year? A. It perhaps was January or February of 1957.

Q. Am I correct that at no time between February 15, 1957, until 1956, until after some time January '57, did you see the finished report or what was had of what was

purported to be the depositions taken on February 15, 1956? A. You say that from February 15, 1956 to 1957, I did not see the finished product?

Q. Yes. I am asking you that? A. No, I did not.

Q. The first time you saw the finished depositions was when you were asked to sign them some time in January or February 1957? A. I wasn't asked to sign them. I was asked to read them and call the girls in to proofread them.

Q. Were you asked to certify, make these two certificates on pages 39 and 40? A. Those two certificates were added after the girls [21] found they—no after the girls were not able to come over and read them and sign them.

Mr. Willett: May I have the original of these transcripts, your Honor?

(Clerk handed document to Mr. Willett.)

By Mr. Willett:

Q. At the time you were first asked to look these over and sign them, I ask you if there was any statement affixed to the last page after page 38 on that other than your certificate on page 39 and the certificate on page 40? Did you have any other kind of statement prepared prior to the time you tried to get Mae Wooten and Beverly Kline to sign them? A. There was a statement in there for each one of the girls to sign. But since they did not come over to read them, these two certificates of mine were inserted in lieu of their statements.

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[22] Q. Is that your signature to page 39 of the certification? A. It is.

Q. Is that your signature to page 40, the certification? A. Yes, it is.

Q. Would you please state if Mr. FitzGerald ever went in your office in either the month of January or February 1957 and asked you while he was there to call Mae Wooten to come over and sign the papers? A. Yes, he did.

Q. Do you know whether or not he had any conversation with Mae Wooten in your office? A. No, I am not sure. I don't think so. I think I went over, and I think I called on my own.

Q. Do you know whether or not Mr. FitzGerald spoke to Miss Wooten in your presence in the month of February 1957? From your office? A. No, I don't recall.

Q. At any time prior to the month of January, of February did you attempt to get either Beverly Kline or Mae Wooten to sign the depositions? A. I personally made a visit. I made a personal telephone [23] call.

Q. When did you make that personal visit; when did you make the phone call, if you recall? A. After the deposition was prepared.

Q. Would that be in the month of January or February, 1957? A. It would be in one month or the other. I can't say which.

Q. To whom did you go? A. I saw Mae Wooten with the Russell Stover Company because she was employed there. The other young lady I was not able to see, she was not working, she was ill.

Q. Did you have this deposition for her to sign with you at the time? A. No.

Q. You just went in to make inquiry if she would sign it? A. Yes, to have her come over to the office.

* * *

[36] Q. Do you know whether or not any kind of a recording apparatus was playing constantly at the time

these depositions were taken, December 15, 1956? A. Yes, February 15, yes, I recall.

Q. Do you know whether it played continuously? A. Yes, I'm sure it did.

Q. Why do you say you are sure it did? A. Because there was a slight sound, I could hear it.

Q. Did you see it in motion? A. I saw it when I first went in. I know it wasn't disturbed.

Q. Had you finished? A. Yes.

Q. Did you ever see the machine after you first went [37] in? A. From where I sat in the room I could see it.

Q. Could you see whether or not it was in motion? A. No.

Q. You don't know whether it was in motion or not? A. I could hear the sound of the cylinder going around, electrical sound.

Q. Did anyone get up at any time and change a cylinder during the time you were there February 15? A. No, not that I recall.

Q. At any time on February 15, 1956 did Mr. Willett ask for the machine to be turned off? A. Yes, he did.

Q. When was that made it you know? A. It was in the beginning of the testimony.

Q. Do you know whether or not it was turned off? A. No, I am quite sure it was not.

Q. You are quite sure it was not? A. That is right.

* * *

[38] Q. How long were you in the room on February 15, 1956? A. I would say it was short of a half hour.

Q. What time did these depositions begin, if you know? A. It could have been three, it could have been four o'clock. I am not sure.

Q. You think you were only there for a total of a half hour? A. It seems to me it was no longer than that.

Q. Do you know what persons testified that day, whose depositions were recorded? A. Well, previously we stated that just the two girls' depositions Beverly Kline and Mae Wooten.

Q. Do you know whether or not Mr. Harry Thomas, Jr. was present? A. He was present in the beginning and was asked to leave by Mr. FitzGerald.

Q. Do you know when he left? A. He left before the depositions were taken.

Q. Left before they were taken? A. Yes.

Q. Do you know whether or not he was in the room at any time when you recorded any of the deposition for Beverly Kline? A. I am sure he was relieved—he left before the depositions were started.

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[40] Q. At any time after you transcribed the draft that you made which was within three months after these depositions were taken, did you sit down at that time and go over the notes with Mr. FitzGerald? A. No.

Q. You simply took them in and left them? A. He was out of town.

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[41] Q. Would you please state if Mr. FitzGerald asked you for your notes? A. No, he didn't.

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CROSS EXAMINATION by Mr. Laughlin:

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[49] Q. Let me ask you this. Do you recall during the deposition that Mr. Willett was referred to as a Judge?

Do you recall that? [50] A. I think perhaps once or twice.

Q. Who referred to him as a Judge? A. I don't knew whether Mr. Thomas or whether someone else did.

Q. You have read the deposition? First let me ask you this, prior to February 15 of 1956, had you ever heard of Mr. Willett prior to that? A. No.

Q. Since February 15 of 1956, have you ever heard Mr. Willett referred to as a Judge? A. Yes.

Q. Was that on many or few occasions? A. Few.

Q. You have read the deposition over, have you, Miss Goebel? A. Yes.

Q. Would you say it represents or depicts just substantially what happened there on that day? A. Yes, I would say.

Q. When the deposition was taken, February 15, 1956, did you know what the lawsuit was about? A. No, I had no idea.

Q. Did you know it had something doing with alienation of affection? A. No.

[51] Q. Do you recall something was asked about a man sending a box of candy to someone? A. Not until the testimony was taken.

Q. Do you recall on that day, Miss Goebel, was a question asked about a man buying a box of candy and sending it to some point? A. Yes.

Q. Do you know where it was to be sent? A. Somewhere in Texas.

* * *

[53] The Court: Miss Goebel, what was your reason for not filing the depositions?

The Witness: I had typed them by that time, but they were not sufficient to turn in to the Court.

The Court: You had typed them by April 2, 1956?

The Witness: Yes, but they were not sufficient. So I just didn't mail them.

The Court: They were not sufficient to your satisfaction?

[54] The Witness: Yes.

The Court: Had you submitted them to either Mr. FitzGerald or to Mr. Willett?

The Witness: No, I laid a copy on Mr. FitzGerald's desk. He was out of town at the time. He didn't get back to say mail them or copy them or whatever. Time got away from me.

The Court: You didn't do any more about them?

The Witness: That's right.

The Court: Did you explain to Mr. Willett what the situation was?

The Witness: I'm sorry. This was just an added feature in my daily life, so many things came up there was a death in the family and illness. I must have overlooked it.

The Court: Did anyone tell you not to send them over?

The Witness: No.

The Court: You weren't instructed by anyone not to send them over?

The Witness: No.

(Letter returned to Mr. Laughlin.)

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[55] The Court: In the certification of the depositions that was read to you there is a statement in there about Miss Kline's state of mind. Where did you get that information from?

The Witness: That paper I signed, your Honor? I [56] did not type it.

The Court: You did not type it?

The Witness: No, sir.

The Court: I understood you to say that Mr. FitzGerald had submitted that to you and you had signed it?

The Witness: That is correct.

The Court: Did you satisfy yourself of the contents of it before you signed it?

The Witness: Yes. Miss Wooten had told me that Miss Kline was ill and under the doctor's care. I reported that to Mr. FitzGerald.

The Court: Let's see that deposition. I will call your attention specifically to what I have in mind.

Did Miss Wooten tell you that Miss Kline was suffering from a mental disturbance?

The Witness: As I recall, yes.

The Court: Where were you when she visited or advised you of that?

The Witness: I was in the candy store.

The Court: That was 1957, I take it?

The Witness: Yes.

The Court: Then did you relay that information to Mr. FitzGerald?

The Witness: Yes, sir.

The Court: Was it after that that this certificate [57] was presented to you for signature?

The Witness: Yes, your Honor.

The Court: Did you make any response at all to Mr. Willett's request for these depositions?

The Witness: I don't believe.

Motion Denied.

The Court: Did you have any reason for not doing so?

The Witness: No.

The Court: I believe you said that you did not before writing up your notes play off this dictaphone record?

The Witness: No, I didn't.

The Court: And looked at no one else's notes?

The Witness: No, sir.

The Court: You did not prepare the transcript that has been sent into the Court?

The Witness: No, your Honor, I didn't.

The Court: But before signing it, you did look it over?

The Witness: Yes, sir.

The Court: Does that conclude the examination by counsel?

Mr. Willett: Yes.

Mr. Laughlin: I have nothing else, your Honor.

The Court: Let Miss Goebel stand down.

Mr. Willett: She can be excused.

The Court: Very much obliged to you for coming over.

* * *

611 The Court: I think the motion should be denied. I want to hear all of it.

* * *

[62] JAMES J. LAUGHLIN, a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Ahern:

Q. For the record, will you state your name? A. James J. Laughlin. I am an attorney, member of the bar, Supreme Court of the United States, United States Court of Appeals, District of Columbia, Circuit Courts of Appeals for the 4th, 5th, 7th Circuit Court, United States District Court for the District of Columbia, United States District Court for the District of Maryland, United States District Court for the Southern District of Indiana. The Military Court of Appeals, Court of Claims, Tax Court, the State Courts of Indiana, where I am a legal and voting resident. My office is in the National Press Building, Washington, D. C.

Q. What floor is your office in the National Press Building? A. 11, Room 1119, begins at 19, probably carries me up to 1121.

Q. The lady who just testified, Miss Goebels, do you [63] know Miss Goebels? A. I know Miss Goebel very well. Known here for several years, she is with the Du-Pont Company on our floor.

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[66] The Witness: Yes, it was to be quashed because the lady was ill. I thought nothing of that. Certainly I had known I would do anything for Miss Goebel; certainly as I would for anyone in the building. Then that evening I sent for Mr. Fitz-Gerald and then asked him what it was about. Then he gave me the name of Mr. Willett. And I said, well, the only fair thing. I don't know what the

merits are, I will call Mr. Willett and ask him if he will go, because it had to be done the next day, Friday, because as I recall, the deposition was scheduled for the following Monday. It had to be on Friday. That is why I called Counsel Willett.

By Mr. Ahern:

Q. Did you call Counsel Willett? A. Yes, I called Counsel Willett, as I recall it was about 6:00 o'clock, between 6:00 and 6:30.

Q. What was the substance of the conversation as to that between you and Mr. Willett? A. I told him I had that subpoena. I told him that, of course, I couldn't say whether the Court would quash it, but I would go before the Court the next day whether it would be Motions Court No. 1, or whether it be another Judge, but I had a matter especially set before Judge Holtzoff which would [67] possibly come in and consume all day. And I asked him if he could appear before either Judge McGuire or Judge Holtzoff, the next day so that he would be represented, so the Judge could get both sides of the picture. I told him I was going to ask it be quashed. He said no, I wouldn't be there. He was very peremptory about it. Said I can't give you any time until next Thursday. So I made an affidavit so the Judge would know so it would not be *ex parte* so the Judge would have the other side of the picture. I prepared an affidavit substantially relating just what I have said. And filed that in Court the next day. So Judge McGuire certified the matter to Judge Holtzoff, since he, since I was engaged before Judge Holtzoff and he was engaged in motions knowing I was in there. He sent the case in there. Then it came on to be heard by Judge Holtzoff. I told Judge Holtzoff that I didn't like

to go to a Judge in an *ex parte* fashion. I felt that there should be both sides to the story. I gave him the affidavit reciting what I had said to counsel Willett over the phone, what he has said to me. Then Judge Holtzoff when I told him about a candy store, he said he didn't think that was a fit place, and he quashed it on other grounds, he said the signature wasn't legible. Furthermore counsel had given an Arlington address, said not even a member of the bar of this Court. We didn't get to the other reasons he quashed it, your Honor, if I recall what he said, it was this, it is not legible and second—

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[68] Q. Coming back one moment to your conversation with Mr. Willett, did you hang up on Mr. Willett? [69] A. No, that was a subsequent conversation with Willett where the man hung up on me.

Q. I think that concludes the direct.

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Mr. Willett: I would like to make a statement for the record.

Mr. Ahern: I object to any statements for the record if he wants to take the stand as he will later on, he can testify. I don't think in view counsel is taking the stand that he should be allowed to testify in the form of oral statements.

The Court: You can predicate your question on the premise of fact.

Mr. Willett: I have no further questions.

Mr. Ahern: No re-direct.

Mr. Laughlin: Mr. Willett will be the next witness.

Discussion.

Mr. Willett: I am not going to take the stand unless you order me to in this case. Last year when I endeavored to take the deposition of Mr. FitzGerald you indicated it was the Court's policy, you didn't want counsel to testify, you precluded me from taking it. My status here is counsel for the defendant. I don't believe they have a legal right to compel [77] me to testify in this case. The only reason I will take the stand is if you so order it.

The Court: I quashed it, the notice to take Mr. FitzGerald's deposition on the ground that I just didn't like the practice of calling on counsel unless it was indispensable. What is your present purpose of calling him?

Mr. Ahern: May I state it then, your Honor, in open Court what the purpose is.

Mr. Willett: I ~~think~~ we should approach the bench if there is a statement to make.

Mr. Ahern: There is no witness conceivably this could prejudice. If your Honor wants me to come to the bench—

Mr. Laughlin: Better have the reporter.

The Court: Let's see what it is. Then we can put it on if you want it there.

(Conference at the bench. Counsel return to their seats.)

Mr. Ahern: Your Honor, for the record, I want to call—

The Court: Just state for the record. State what you stated at the bench.

Mr. Ahern: Yes. I'd like to call Mr. Willett to the stand to ask him about the following issues which we believe are relevant because of the animosity

which exists between Mr. [78] FitzGerald and Mr. Willett. Number one, we would like to call Mr. Willett to the stand to examine him as to whether he had not filed certain pleadings in this court in which he was making the contention that no deposition could be filed unless local counsel was present.

We were then asked further questions as to whether he did not in that pleading and with appropriate notices that this matter was not finally determined by this court until some time in January of 1957, and that he had made the contention supported by the rules of Court in certain cases that he cited that local counsel should be present.

Number two, we do that because your Honor has indicated we think it relevant to the issue because your Honor has indicated there are only two issues although a number of collateral issues seem to be coming up in this case as it moves along, seem to be two issues, we are trying Number one, whether Mr. FitzGerald posed as of that time as an FBI agent, two, as to the situation of the delay in filing the depositions. We think this is relevant to show that was one of the factors which contributed to the delay. Finally, since Mr. Willett has raised the point that local counsel was present, it might be a foolish waste of time to write up the deposition if ultimately your Honor was going to rule that local counsel would have to be present at a deposition.

Number two, we feel it is material to call Mr. [79] Willett to the stand to ask him certain questions on whether or not the word "Judge" was used during the course of the deposition although the only material parts of the definition refer to the candy

box that is the only material evidence in the deposition. Mr. Willett threw out the examination of his witness Kline, Wooten and Thomas, has asked numerous questions as to whether the word "Judge" was ever used. And has made statements that he did not represent himself as a Judge. We would then ask him certain questions as to whether he did not portray himself as a Judge to one William Harrelson against whom he had secured a judgment.

The Court: When was that?

Mr. Ahern: Your question, your Honor, was when?

The Court: When was the statement allegedly made to Harrelson?

Mr. Ahern: It was made, your Honor, I will give you the date, in March of 1956. I would like to proffer, I would propound this question to him.

Mr. Willett: I'd like to ask if this is pertaining to this case?

Mr. Ahern: No, it does not pertain to this case. I would if I were allowed to put him on the stand. I would propound this question to him, did you or did you not make the following statement to Mr. Harrelson: "I have an ace in the hole. I will put you in jail. You have committed a crime. I am [sic] a Judge and I know the law. You will either do something about this or I will definitely put you in jail for a year. You have the key to the jail in your pocket and it is up to you."

The Court: Where was that supposed to have been made?

Mr. Ahern: That was made over the telephone to Mr. William B. Harrelson against whom Mr. Willett

had secured a civil judgment in behalf of a client named Wendell E. Shawn and Betty R. Shawn. I would then propound the next question to Mr. Willett, isn't it a fact that after you had obtained that judgment you had a warrant issued out of that Court upon Mr. Harrelson that you then went over into the Court and asked special permission and prosecuted in the name of the Commonwealth Mr. Harrelson who was acquitted by the Trial Judge?

I would propound those questions because I think it is relevant here to the issue of the good faith of the report by Thomas to the FBI as to whether Mr. FitzGerald posed as an FBI agent.

The Court: Didn't catch that good faith of what?

Mr. Ahern: It would go to the good faith and to the credibility of the testimony of Thomas in which Thomas stated that he reported some time I think in March or April of 1956, to the FBI that Mr. FitzGerald had posed as an FBI agent.

We think that would be material because if Thomas was acting under the advice of Mr. Willett, and Mr. Willett had [81] secured this warrant against Mr. FitzGerald, it would be a factor for your Honor to consider whether Thomas and Willett were acting in concert in order to impede Mr. FitzGerald in getting admitted in this case. Because obviously if an investigation was made by the FBI of Mr. Willett that would impede his admission in this case.

The Court: You don't mean of Mr. Willett?

Mr. Ahern: I mean of Mr. FitzGerald.

The Court: I think those are the points you called to my attention.

Mr. Ahern: I think I have stated all the points I would with respect to the points say while I recognize normally before your Honor rules, normally of course, it is not desirable for attorneys to be taking the stand in a case, I think your Honor must keep in mind one very important factor with respect to this case. After all, Mr. Fitzgerald is a lawyer from a foreign jurisdiction. I guess that is why we had the Federal court because if a lawyer from a foreign jurisdiction had to come in to a state court, if unfortunately that lawyer from the foreign jurisdiction was in a bitter controversy with a lawyer from the local jurisdiction, there would be a certain reluctance to go into the state courts. We are fortunate we are in the federal courts here where Mr. Fitzgerald will be treated equally with Mr. Willett.

Now, your Honor, I think it is material if Mr. Willett has [illegible] knowledge to be a fact witness. I think that the rule that would normally prohibit your Honor from putting a lawyer on the stand should be overwhelmingly here in the fact that after all the question as to Mr. Fitzgerald's witness has been raised. If this testimony can be elicited, your Honor, then it would be [illegible] want to have [illegible] I have announced that I would ask your Honor to allow me to call Mr. Willett to the stand so that I might examine him.

The Court: [illegible] declined.

[illegible]

Mr. Ahern: Your Honor, this might be a convenient time to dispose of the issue of character witnesses we served pursuant to your Honor's suggestion.

The Court: Let me see first, are there any other witnesses other than character witnesses?

Mr. Ahern: Yes, there will be. They will take some time.

The Court: When you say time, what do you mean?

Mr. Ahern: Certainly I would assume one witness would take between oh, 20 minutes, 25 minutes, possibly a half hour on direct.

The Court: Without divulging anything, could you [83] give me a list or would you prefer not to?

Mr. Ahern: I would prefer not to.

The Court: All right.

Mr. Ahern: I did refer to Mr. Willett a list of witnesses that would be called.

The Court: Who would be called as character witnesses?

Mr. Ahern: Your Honor suggested it might be done by stipulation rather than producing these people.

The Court: Of course, I can't force anybody to stipulate.

Mr. Willett: We won't stipulate. I don't know how long they have known them. I know—

The Court: Who are they?

Mr. Willett: Paul Maxwell, Secretary of the Cabinet, who knows Mr. FitzGerald, we will call Mr. McCormick, he knows Mr. FitzGerald. We'd call Henderson Lanham from Georgia, who knows Mr.

FitzGerald and Mr. Furcolo who also knows Mr. FitzGerald.

The Court: Who is Mr. Furcolo?

Mr. Willett: He is Governor of Massachusetts.

Mr. Ahern: The statement was made, I would have requested the Clerk to issue the subpoenas.

The Court: The suggestion came from me, that you might be able to stipulate as I recall it. I think I was [84] the one that said it. I ordinarily have a rule of thumb. I don't know whether you have it in the District of Columbia or not, that character witnesses are limited to three or four.

Mr. Ahern: Yes, these are five.

The Court: This is simply a practical suggestion. You have finished your testimony this afternoon, you are on your other testimony?

Mr. Ahern: I would certainly expect to.

The Court: You can do that readily?

Mr. Ahern: Yes.

The Court: Your concern is about getting this witness here, getting their depositions so on?

Mr. Ahern: Yes.

The Court: What about a letter from them?

Mr. Willett: No, your Honor. I am confident all these gentlemen are very fine individuals.

I would not enter any stipulation for my client as to what they know. I think a letter won't give me the opportunity to find out how long, what they base their background of Mr. FitzGerald of, I couldn't stipulate as to that.

The Court: I think I will receive letters from them. If Counsel will tell me, give me their as-

surance that they will themselves seek these letters and tell the correspondents the circumstances, just tell them, it isn't an occasion for eulogy or anything of that sort but what the Court wants are [85] the facts that they have in their possession as to the character of Mr. FitzGerald.

Mr. Ahern: Yes.

The Court: Will you and Mr. Laughlin do that?

Mr. Ahern: Yes, will your Honor indulge me one second?

. . .

[87] Mr. Ahern: Before we call the next witness, your Honor, can take judicial notice of this, I call to your Honor's attention the certification of Miss Goebel on the deposition I read: "I, Pauline Goebel, the Officer before the foregoing deposition was taken—I will read you the pertinent part I am concerned about.

Oh, yes, on page 40, "I Pauline Goebel, the officer before whom the foregoing deposition was taken do hereby certify that the witness whose testimony appears in the foregoing deposition were duly taken by me and that said deposition is a true record of the testimony given by said witnesses."

I call that portion to your attention that the certification does not say that she, here is transcribed the deposition stenographically that has been filed before your Honor.

At this time I will now call Mr. Weinberg.

[88] The Court: Gentlemen, let the record show there have been filed the two letters that were mentioned at the last day of our hearing, here. One was Mr.

Willett's letter to Judge Holtzoff; the other was Mr. FitzGerald's letter to the Clerk in Richmond.

You will recall they were to be obtained and put in the jacket. That has been done.

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MILTON WEINBERG a witness of lawful age, having been first duly sworn, was examined and testified as follows:

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[89] Direct Examination by Mr. Ahern:

Q. State for the record your full name? A. Milton Weinberg.

Q. You are on active duty at the present time? A. Yes, I am in the Naval Air Reserve on active duty right at the moment.

Q. What rank do you hold? A. Lieutenant in the Naval Air Reserve.

Q. Are you a member of the bar? A. Yes, I am.

Q. What bar are you a member of? A. The District of Columbia.

Q. Sir, do you know the attorney here seated to my left, Mr. FitzGerald? A. Yes, I do.

Q. Directing your attention to the year of 1956, did you have any occasion to talk with Mr. FitzGerald concerning the transcribing of a deposition? A. Yes.

Q. Will you tell his Honor if you can, when that first occurred? A. It was some time in the summer of 1956. I do a little work for Mr. FitzGerald part time to aid me in the study of law. And being a clerk-typist, he asked

me would I type a certain [90] deposition for him. I said I would, and I did.

Q. Are you a clerk-typist, sir? A. Yes, I am.

Q. Sir, as a result of your conversation in the summer of 1956, did you transcribe a certain deposition? A. Yes, I did.

Q. Was that taken from any kind of an apparatus? A. It was taken from a recorded disc.

Q. Sir, after that deposition, after you transcribed that deposition, did you have any further conversation with Mr. FitzGerald about putting the deposition in form to be filed in Court? A. Yes, I did.

Q. Can you tell his Honor what the circumstances were and what was said by Mr. FitzGerald, what was said by you? A. Mr. FitzGerald said that it may be needed to present it in court.

Mr. Willett: I am going to object to what Mr. FitzGerald said.

The Court: Let him state Mr. Ahern, just what he did.

By Mr. Ahern:

Q. What did you do, sir, as a result of any conversation you had between you and Mr. FitzGerald? [91] A. I typed up this deposition.

Q. Sir, can you tell us about when you typed up the deposition? Your Honor, maybe it would be better if I show the original that is on file, sir. I show you the original deposition which is filed in this case on February 26, 1957. I will ask you first when it was that you transcribed this deposition in the form in which it now appears? A. You mean the first time I typed it on a rough draft or the second time when I took it from the rough draft into this form?

Q. Let's take them by degrees. When did you type the thing in the rough draft? A. I typed it in the rough draft in August '56, this last year.

Q. Was that the transcription that was from the disc? A. Yes, directly from the disc, that's right.

Q. Where did you do that? A. In the office of Mr. FitzGerald where I usually do my work.

Q. I gather from your testimony it was then reduced to a rough draft form, is that right? A. That's right. Yes.

Q. Then did there come a later time when you reduced your rough draft to its final form that it now appears in? A. Yes, I wasn't requested to put it in the final form [92] because there apparently was no need for it. There was no monies coming forthcoming to do it. About January of '57 of this year, Mr. FitzGerald did tell me there was money going to be paid to do the work, I would be paid for it. I did do the typing in the third week of January.

Q. Sir, let me ask you this. This deposition in its final form does it represent a true and accurate record of what came off the disc then what later came off your rough draft? A. Yes, absolutely.

Mr. Abern: Your Honor, will you indulge me for a moment?

That's all, your Honor.

* * *

CROSS EXAMINATION by Mr. Willett:

* * *

[94] Q. What bar association are you admitted to? A. The District of Columbia.

Q. District of Columbia? A. Yes.

The Court: You have passed the bar examination, have you?

The Witness: Yes.

The Court: You are a member of the bar?

The Witness: Yes, sir.

* * *

[100] Q. As a stenographer or typist have you ever been called upon in any case to prepare to take the depositions and transcribe them and turn them in to any clerk? A. No.

Q. This is the only time you ever assisted in depositions? A. No, I wouldn't say that. I have done depositions, [101] typed them from other forms that I needed to have them typed.

Q. In what capacity? A. As a typist that is all.

* * *

[102] Q. That was for the draft? A. No, that was the entire thing.

Q. Did he personally give you $5? A. Yes.

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[106] BENEDICT FRANCIS FITZGERALD was called as a witness and having been first duly sworn was examined and testified as follows:

Direct Examination by Mr. Laughlin:

Q. Keep your voice up now so we can all hear you. State your full name. [107] A. Benedict Francis FitzGerald.

Q. What is your profession? A. Attorney and General Practitioner of Law.

B. F. FitzGerald, for Pltf., Direct.

Q. Tell his Honor, your attorney, of what bars of which you are a member? A. I am a member of the bar of the Supreme Court of the United States of America, the District of Columbia, the Commonwealth of Massachusetts, the District Court of United States District Court for the Northern District of New York, United States District Court for the Eastern District of Massachusetts, and the Circuit Court of Appeals in Washington, D. C. United States Tax Court, United States Court of Patent Appeals, United States Court of Military Appeals. And also licensed to practice before the Civil Service Commission. And I also hold membership or licensed to practice before the Immigration and Naturalization Service; that is about it.

Q. Are you a member of any bar association? A. I am a member of the Boston Bar Association, the Massachusetts Bar Association, the American Bar Association, the District of Columbia Bar Association, and a few others.

Q. Mr. FitzGerald, of what state are you a legal voting resident? A. I am a legal voting resident of the Commonwealth of Massachusetts.

Q. Tell us something of your training and experience as an [108] attorney? A. Well, I was admitted to the Bar for the Commonwealth of Massachusetts back in 1939 or 40. And after that, I had graduated from the Boston University Law School, prior to that, after that I also was an examiner and attorney for the United States Government, the National Labor Relations Board, serving in Washington, D. C., Buffalo, New York, Philadelphia, Penn., and Detroit, Michigan.

Thereafter I was a trial attorney and United States Naturalization Examiner for United States Department of

office serving as United States Naturalization Examiner for the State of Florida.

Thereafter, I went into the United States Navy as a Lieutenant, went up through, became a Lt. Commander and served as a member of the Naval Aviation Cadets Selection Board. And also was in charge of some legal work in the Office of the Secretary of the Navy for the late Secretary Forrestal.

I also served as Special aide and consultant to the Chairman of the United States Senate Naval Affairs Committee during the war, the Hon. David Walsh, late of Massachusetts. And I was also a member of the National Urgency Production Commission, or the National Manpower Priorities Committee for the United States Navy during the war. After the war was over, I went back to Massachusetts engaged in the general practice of law in Boston and also in and about the Commonwealth of [409] Massachusetts. At the same time, I was chief counsel for the House of Representatives in the United States Congress Committee to investigate lobbying activities, that was about 1950 while practicing law and carrying on my practice. Another occasion I was chief counsel to United States Senate Committee for Interstate and Foreign Commerce, serving for the late Charles W. Tobey, Republican of New Hampshire, Senator Tobey.

Q. Have you ran for political office? A. Yes, I was Democratic nominee for Secretary of State in the Commonwealth of Massachusetts in 1946, and 58 I was a candidate for Lt. Governor of Massachusetts.

Q. Now, you know Mr. Willett here? A. Yes, I do.

Q. Tell us when you first knew Mr. Willett? A. When I first met Mr. Willett was on February 15, of 1956.

Q. What were the circumstances under which you met him then or rather what was the occasion for the meeting at that time, sir? A. Pursuant to a notice that I had sent out in the case of Thomas versus Cassidy, to take the deposition of a candy girl by the name of Beverly Kline and Mae Wooten.

Q. This lady who is in the courtroom, Mrs. Thomas, is she related to you? A. Yes, she is my youngest sister. [110] Q. In this case of Thomas versus Cassidy, sir, will you tell us when that was first filed? A. Yes, that was filed in the first week in November of 1955.

Q. The Mrs. Cassidy, the defendant in that case, who is Mr. Cassidy? A. Mrs. Cassidy is the wife of Colonel Robert F. Cassidy, of United States Army now with the Armed Services Staff College at Norfolk, studying to be a General.

Q. Mr. FitzGerald, in connection with a deposition to which you referred a moment ago, was there notice filed, sir, in connection with that? A. Yes, there was on Feb. 9, 1956.

Q. Mr FitzGerald, let me ask you this: Was there something that happened in the month of Feb. 1956, that caused you to take that deposition? A. Yes, there was.

Q. What was it? A. I had observed my then brother-in-law, J. Harry Thomas, Jr. go into a candy store, call it Russell Stover Candies, on 1343 or thereabouts, F Street, N. W. I saw him enter that store. Of course, at that time Mr. Thomas, I had been looking for him high and low since he wasn't paying any support for my sister's maintenance and her young son, my nephew, J. Harry Thomas, the third, since I was called upon to support them, in [111] the absence of my brother-in-law

I was naturally quite interested in his whereabouts. I had been given a box number Box 3715 in Washington, D. C. which was his only known address I think at that late date although he had been residing with Mrs. Cassidy for some time, at 321 Ripley Street, Alexandria.

Mr. Willett: He asked a question about buying a box of candy. He is going into family background. I don't see the relevance.

The Court: Let's get down to it.

By Mr. Laughlin:

Q. Let me ask you this question, at the time of the event you just described was Mr. Thomas still married to your sister? A. Oh, yes.

Q. The bonds of matrimony had not been dissolved? A. No.

Q. Now, then, as a result of that deposition, sir, had you made plans then and arrangements to take the deposition? A. Oh, yes.

Q. Where was it to be taken? A. In my office at 1152 National Press Building.

Q. Who else is in that office, Mr. FitzGerald? A. I am associated with the Hon. William P. MacCracken, Jr., an attorney of 30 years' experience in the District of [1124] Columbia, and former Under Secretary of Commerce during the Coolidge Administration. We have several others in there, but he runs the show.

Q. Also tell us this, do you know a Miss Goebel who has been referred to here? A. Oh, yes.

Q. Can you tell us where her office is with respect to your office, sir? A. Well, she is down the hall. She is secretary to the head of electrical department for the

DuPont Corporation of America, DuPont de Nemours that is. That is just down the hallway a few doors.

Q. Let me ask you this, then, what was the time set for the deposition? A. Three o'clock.

Q. Tell us then if the parties arrived at that time if they didn't arrive at that time when did they arrive? A. Well to the best of my recollection they arrived around 3:15 or so, or 3:00 o'clock.

Q. Who was in the group? A. In the group was Mas Wooten and Paul ne, I mean Mac Wooten and Beverly Kline with the first group to arrive.

Mr. Willett: Just a minute. The question comes to my mind, the point comes to my mind if Mr. FitzGerald is going to be a witness not attorney in this case, he has had the benefit [113] of sitting here hearing the testimony of Miss Kline, Miss Wooten, Miss Goebel, J. Harry Thomas, now he is coming up, is given opportunity to take the stand. I submit to you he should have been excluded. He has had the benefit of hearing everything said here now. He is being called on to testify as a witness.

The Court: The objection is overruled.

By Mr. Laughlin:

Q. Proceed now, had you finished? A. The question is, I believe, when did they arrive? The people who were to attend?

Q. Up to that time, were those parties known to you, Miss Wooten and Miss Kline? A. Miss Kline was known to me. But I did not know Mrs. Wooten. I had never met the woman.

Q. At that time did you know whether either of those parties were represented by counsel? A. No, I did not.

One correction, except that somewhere along the line I determined that a Mr. Jones of Kansas City was representing the Russell Stover Candy Company. I had noted his name on the bottom of this notice that went out. We had sent him a copy.

Q. When those parties arrived, sir, did you begin the taking of the deposition? A. No, they arrived, these two young ladies arrived first. I waited for the others to arrive. We had served a [114] notice on Mr. Willett. We didn't expect he had or would be there, but he showed up soon after that.

Q. How much time intervened between the arrival of Mrs. Wooten, Miss Kline and the arrival of Mr. Willett? A. I would say there was an interval of three to five minutes.

Q. Did anyone come with Mr. Willett? A. Yes, my associate or at least the gentleman that assists me on occasion with my research, Mr. Harrigan was with him. Also J. Harry Thomas, Jr., my brother-in-law.

Mr. Harrigan had met them out in the elevator somewhere.

Q. At that time, sir, was Mr. Thomas a party to the litigation? A. Oh, no.

Q. At that time, did you know whether Mr. Willett represented Mr. Thomas? A. Mr. Willett, yes, I did know that he had represented Mr. Thomas. Because I received a letter from Mr. Willett which is in the files of this court indicating that Mr. Willett had never met Mrs. Cassidy, but that he had been retained as an attorney for Mr. Thomas, and that he hoped to meet Mrs. Cassidy and secure the retainer, and become her attorney, or something like that. And that when he did, he would like me

to for that to favor him with some notice of what the case was [115] all about.

Mr. Willett: I wonder if that letter is in the record. We could get that.

The Court: You can get to that on cross examination.

By Mr. Laughlin:

Q. Mr. FitzGerald, then— A. Then of course he filed an appearance in this Court in about March or February of '56 in which the position to this Court that he was attorney of record for J. Harry Thomas, Jr., also Billie Smith Cassidy. I remember it distinctly. I thought it quite unusual that he would represent both.

Q. After then Miss Kline and Miss Wooten arrived and Mr. Willett arrived, and Mr. Thomas, tell us then did the deposition get under way, or did anything else take place? A. After they all got in there together, we had quite a few in the room. It also was rather congested. Mr. Willett said to me, would you please step out of the room with me? I have something that I want to discuss with you.

Q. Was that before the deposition actually got under way? A. Oh, yes, that was before Miss Goebel arrived.

Q. Tell us then what transpired between you and Mr. Willett? A. Then Mr. Willett called me out of the room, asked me, [116] he wanted to talk to me. I brought him into an adjacent office occupied by an associate in the office by the name of Frederick Umteidt, who—

Q. Will you spell that? A. U-m-t-e-i-d-t.

Q. Go ahead. He is the fellow that invented foam rubber. He is an attorney, he has an office with us. I

brought Mr. Willett in there. We had a conversation in that office.

Q. All right. What was that about? A. Do you want the full conversation?

Q. Yes. Let us have the full conversation. A. Mr. Willett said "I am Judge John R. Willett, from Alexandria." I said, "I already know that, Judge." I said, "I have had your credit checked. You are the fellow who is down there in the corner of K and Connecticut Avenue, as a part-time attorney, in Washington, D. C." He said, "Yes, that's right." He said, "Now I represent as you know Mrs. Cassidy, and I represent Thomas." I said, "I have already received that word from your correspondence." And he said, "Now, Mr. FitzGerald," he said, "I have investigated this case very thoroughly. And I have learned from several sources that you have been running all around the countryside representing yourself as a Federal Bureau of Investigation Agent." And he said, "Furthermore," he said, "Your brother-in-law Thomas has told me all about you. [117] I think it would be very smart if you dropped this Cassidy case which is in Virginia. Because if you don't drop it, it is going to be rather difficult for you to carry on your practice as a lawyer." He said, "As you no doubt know, there is a criminal charge that we have had filed against you over in Alexandria, Virginia. And I am a judge over there. And if you don't terminate this proceeding we are going to have you picked up on this warrant", and I said, "Now just a moment," quite a few interruptions there, I talked to him, carried out quite a conversation. He did mention that this warrant was pending in Virginia, and that if this case wasn't dropped the warrant would be hand

carried over to the District of Columbia and I would be served with this warrant and charged with a series of crimes with respect to breaking and entering and so forth. And that also they would start civil litigation against me involving libel for referring to my brother-in-law in some various terms. That was the sum and substance of the conversation.

During the conversation it was interrupted by Mr. Harrigan running out and coming into the room. I told Harrigan to get back in my office and watch the files, because Thomas was alone in my office with the two girls, and I had had previously had experience with my brother-in-law stealing the files, so I asked Mr. Harrigan to get back in there and protect the files, and I think that about covers the [118] conversation.

Q. You relate about a conversation where Attorney Willett said there had been something about a warrant. Was there a warrant actually outstanding at that time? A. Oh, yes. I don't really know that. This is a very difficult thing, this warrant. This is a very nebulous thing. This is a warrant you are referring to issued out of Judge Willett's Court.

Q. That's the one I refer to.

Q. What did that charge you with? A. It charged me with the crime of grand larceny.

Q. What was the substance of it? A. The substance of it was that I broke into an automobile owned by Mrs. Cassidy, which was supposed to be in Thomas' control, and that I ransacked the car and stole a note in the amount of about $1500, I believe. The note, of course, was mentioned in there. There were a few other charges. One of them was for tampering with a motor vehicle, I believe. This

warrant getting back to this warrant, this warrant is on file in this court. I picked that up later on. At that particular time, I think the actual existence of the warrant wasn't too well known to me. I had made inquiry over here. I had contacted the clerk of Mr. Willett's Court. She had no record of the warrant being in existence. Since then, of course, I ascertained there was actually a warrant issued from Mr. [119] Willett's Court on November 5, of '55. Wait a minute, November 20, '55, somewhere around there, some time after this proceeding had been commenced, and after the divorce proceeding had been commenced on the ground of adultery over there in Maryland. Some time after these two actions had been instituted by my office, and by my associates, this warrant, criminal warrant had issued out of Virginia, out of this Police Court.

Q. Mr. FitzGerald, what reply did you make to the Attorney, Willett, when he told you that the deposition should be abandoned, about the warrant, so on? What response did you make to that? A. I said, "Judge, that will be enough of that. Let's get back in there and take this deposition, and you have chosen to draw swords with me, I will go ahead."

Q. Did the deposition get under way? A. It did.

Q. Was there some kind of device in there, Mr. FitzGerald? A. Oh, yes.

Q. Was that device, first let me ask you this, what period of time did the deposition come in? A. Well, let's see now. It took about I'd say probably 30 minutes, 40 minutes. Wait a minute now. Maybe about 40 minutes.

Q. Was the device playing all the time? [120] A. Yes. All the time since Miss Goebel entered the room, all the

time since I went back in the room with Judge Willett, or Attorney Willett.

Q. Mr. FitzGerald, we will come back to the deposition in a moment. Let me ask you this. You have heard previous testimony in this Court, I believe, from the witness, Kline, that you had gone in the store, the candy store and had represented yourself as an agent of the FBI. Did that happen, sir? A. Of course not.

Q. Tell us what if anything was said when you were in the candy store about the FBI? A. I went into the candy store and made reference to the fact that the FBI was looking for this man, that I had reported him to the FBI, and that I was an attorney-at-law, and I presented Miss Kline with a card indicating on the card that fact.

Q. Let me ask you this, in relation to your visit to the candy store, you stated, you told us what you have said, when was it you had been to the FBI or in touch with the FBI with regard to Thomas? A. Two days previous to the entrance into the candy store, specifically on February 7, of 1956, I had contacted the Federal Bureau of Investigation and talked and invited to my offices two agents, one of them was named Nagle, the [121] other one was William Higgins. Both of these gentlemen had never been known to me before. But they were sent up here by one of the headmen in the FBI who I contacted, and I went over, they were in my office on February 7 of 1956, and I went over all the evidence relating to a violation of the Mann Act transporting a woman in inter-state commerce, to wit, Mrs. Billie Smith Cassidy, and reported that incident to the FBI as I have on several other occasions, in this particular case, trying to get some action.

B. F. FitzGerald, for Pltf., Direct.

Q. Now, Mr. Fitzgerald, with respect to the deposition, taking of the deposition, when did you ascertain if you did ascertain, that these witnesses had been in the company of Mr. Willett? A. That didn't come out until I believe on cross examination. I had a very short direct examination. Of course, this whole deposition is typical of any usual deposition hearing that isn't well controlled. I have taken many depositions. I can say that this is probably—one of the worst.

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[122] By Mr. Laughlin:

Q. This is the original deposition.

The Court: Pardon me, shouldn't it have an exhibit number?

Mr. Laughlin: I think so.

The Court: You go ahead then, we will have it marked.

Mr. Laughlin: I hand you this, Mr. FitzGerald, ask you if you have seen that or a copy of it. You could answer that question first.

The Witness: Yes.

Mr. Laughlin: Does that accurately depict, Mr. FitzGerald, what took place at the deposition?

The Witness: Yes.

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[123] The Clerk: It will be Plaintiff's Exhibit No. 3.

(Plaintiff's Exhibit No. 3 was received in evidence.)

By Mr. Laughlin:

Q. Mr. FitzGerald, at the time of the deposition, either at the deposition or in the adjoining office, was there any-

thing said about who would sit or participate in any one of the cases? A. Oh, yes.

Q. What was said about that? A. That John R. Willett indicated to me, stated to me at that time in my office—

Mr. Willett: May I ask when this is supposed to have been said?

The Witness: Yet, this is after you called me out of the deposition room.

By Mr. Laughlin:

Q. February 15, 1956? A. Yes, February 15, 1956, you called me into Mr. Umteidt's room or I brought you in to Mr. Umteidt's room on that occasion, you told me in the event this action which is pending in this Federal Court Thomas vs. Cassidy was not dropped, that I would be prosecuted criminally in Virginia in your court. That is in the Court of John R. Willett, and that he would preside over the case, or if he didn't preside, [124] one of his associates would, and I would be summarily disposed of.

Mr. Laughlin: Your Honor, that concludes the direct.

CROSS EXAMINATION by Mr. Willett:

Q. Mr. FitzGerald, being an attorney with your background and experience, having had the experience in all these Senatorial committees, why is it that at the threat, if the threat you allege was made by John Willett relative to a criminal warrant, the fact you would be put in jail, why didn't you notify Judge Bryan of this Court or make a statement for the record on February 15, 1956 bringing it to the Court's attention? A. You want the full answer to that?

Q. I would. A. You are not going to interrupt me

The Court: Mr. FitzGerald, you know how to answer the question.

The Witness: I'm sorry my answer to that is simply this. I had done a credit check on you. I was fully aware of your background. You were born in Maine. You weren't a Virginian.

Mr. Willett: I object.

The Witness: He asked me the question.

The Court: That is not responsive.

[125] The Witness: I was fully aware of your background. I knew you in the legal circles. You weren't any threat. I wasn't concerned too much about you.

Mr. Willett: I ask you to make him be responsive to the question.

The Court: The question was as I recall it, why you did not report it?

The Witness: I submit that is responsive.

The Court: To this Court?

The Witness: I submit that that is responsive. I am trying to give you the answer.

The Court: I don't think that is responsive.

Mr. Laughlin: Your Honor, if it is leading up, I think it could be responsive, your Honor. He had a reason. If he was told certain things, with respect to Mr. Willett, then as to why it was not reported to your Honor, or some other judicial officer, I think it would be.

The Witness: I don't believe in reporting to—

The Court: He has answered it.

The Witness: I don't believe in reporting on another attorney having any proceedings involving any other attorney I wanted to handle it myself. I thought I was well equipped to handle the situation.

By Mr. Willett:

Q. Do you mean to say the threats that were made, that you allege John R. Willett made, yet you didn't see fit [126] to bring it to this Court's attention? A. By you? I didn't think you would be capable of those things you threatened me with.

Q. Why didn't you tell the Judge that the threat was made, isn't that unusual conduct? A. I told you that is against my policy when I run up into a person whom you appeared to be making those kinds of representations, I don't follow any policy of reporting it to Courts or anybody else. I think I can deal with it myself.

Q. Did you at any time take necessary action to report it to any Judge of the Civil Pleas, Court that a threat of this kind had been made? A. No, I did not. I sent Mr. Harrigan over to the Civil and Police Court to investigate some of your claims that a warrant was supported to have been filed against me.

Q. I am having difficulty here. He is not being responsive to the question. He is an attorney. He is much more skilled than an ordinary lay person. He can answer my questions. It is fruitless to go on if I am not going to have the cooperation if the Court doesn't direct him to answer these simple questions. A. In what manner?

The Court: What is the question?

Mr. Willett: The question was, did you see fit to go to the senior Judge of the Civil and Police Court to complain about this alleged threat?

The Witness: The answer is I have never complained to that Court.

Mr. Laughlin: I think he added something to that question.

The Court: Let's start with a fresh question.

The question is why Mr. FitzGerald did not make complaints to the chief judge of the Civil and Police Court in Alexandria if these things had been said to him by Mr. Willett?

The Witness: The answer to that as I told you, it is rather lengthy. I don't believe in any policy of reporting a brother attorney, even though they commit what I feel is a violation. I think I can take care of it myself. I am very capable of taking care of anybody who is unethical or done anything like that. I think that I can adequately handle it, and it hasn't bothered me in the past whenever I run into any situation.

The Court: I think you have answered it. What is your next question?

By Mr. Willett:

Q. At any time did you go to the Civil and Police Court and personally determine whether or not a criminal warrant had been taken out against you? A. Well, I told you, I called up on the phone. I talked [128] to your clerk.

Q. My question is did you? A. Yes, I didn't go over personally. My answer is I called on the phone.

Q. You did not go personally to make inquiry, but you telephoned? A. Precisely. I sent Mr. Harrigan on another occasion.

The Court: When was that that you telephoned and made the inquiry?

The Witness: I think that was shortly. I don't know. I really don't know.

By Mr. Willett:

Q. Do you know what person you spoke to?

The Court: Let's get the dates.

The Witness: No, I can't place the date.

The Court: The present case?

The Witness: There have been so many warrants.

The Court: Just a minute, the present case you stated was filed in the fall of 1955.

The Witness: November 1955.

The Court: Did you make the inquiry before that suit was instituted?

The Witness: Before what suit was instituted?

The Court: Of Thomas against Cassidy?

The Witness: There was nothing against me before [129] this suit was instituted.

The Court: What I am going to try to find out —

The Witness: That's right.

The Court: When did you make the inquiry, was it before or after this suit was filed?

The Witness: This suit was filed first part of November 1955, there was nothing against me until this suit had been filed.

The Court: When did you make the inquiry; can you fix it towards the first of the year?

The Witness: I can't fix it exactly. I think it wasn't before the 1st of the year. I think it was in '56.

By Mr. Willett:

Q. Do you know in what month '56 you made that inquiry? A. I think it was after you visited my office.

Q. What month would that be? A. I wouldn't know that; there have been so many warrants filed against me by you or your clients, Mr. Thomas, that I don't know.

Mr. Willett: I am going to instruct the witness to just answer this question. It is simple. He can reply yes or no.

The Court: Just a minute. I think the question can be answered much more briefly than you're answering them.

[130] By Mr. Willett:

Q. Did you state the name of the person you spoke to on the Civil and Police Court respecting a warrant? A. Yes, if you can give me the warrant, the name of the clerk on the bottom of it, it is a woman. I filed the copy of the warrant in this court here, filed in your court against me, by J. Harry Thomas, Jr., dated in the last week in November, of 1955. I gave it to his Honor here, on January 4, 1957 and told your Honor all about it at that time.

Mr. Laughlin: Your Honor, they might simplify things. They are referring to warrants, if Mr. Willett has the different warrants Mr. Willett issued—

Mr. Willett: I object to that. It hasn't been established here today that Mr. Willett issued any warrants.

The Court: Take it easy. The Clerk has in his hand I think the warrants the witness is referring to. Give it to Mr. Willett.

The Witness: That looks like it.

By Mr. Willett:

Q. Making reference to this criminal warrant, marked 110. A. This is the one I filed. This appears to be the one I gave to his Honor here, Judge Bryan, on January 4, 1957. Yes.

Mr. Laughlin: May I see what he is looking at?

The Witness: The name of Helen S. Gorman to [131] be a member of your Court, down there, she is the lady that I reached on the telephone.

By Mr. Willett:

Q. What question did you direct to Helen Gorman?

Mr. Laughlin: So the record won't be confused this has the number 110 on it. Could I have some kind of mark for the purpose of this hearing?

The Clerk: It has Plaintiff's Exhibit No. 1 on it, on the back.

Mr. Laughlin: It is in evidence in this case.

The Clerk: Yes.

The Witness: Plaintiff's Exhibit 1, yes, I gave this to the Court.

Mr. Laughlin: I don't recall. I thought maybe I had missed something they don't recall that being in evidence in this case. Does his Honor rule it being in evidence in this case?

The Court: I recall Mr. FitzGerald himself produced it.

Mr. Laughlin: Since we have been going on—

The Court: No, he mentioned January 4, 1956.

Mr. Laughlin: For this hearing. Will it bear the same number for this hearing?

The Clerk: I have a couple of Plaintiff's No. 1. One was for the deposition hearing, this was one by Mr. [332] FitzGerald on January 4 on the hearing of a motion that was made.

The Court: Let's give it another number now then.

The Clerk: I can give it to Plaintiff's Exhibit No. 4, for the purpose of this hearing, sir.

The Court: To distinguish it suppose you make it Plaintiff FitzGerald's No. 4.

The Clerk: Yes, this is the same warrant.

The Witness: This is the same warrant I produced.

The Court: Wait a minute, there is no question pending.

By Mr. Willett:

Q. Please state what you said to Helen Gorman when you telephoned the Civil and Police Court? A. I said, Mrs. Gorman, I asked her, that's the one, Miss Gorman, I asked her if there was any warrant over there against Benedict F. FitzGerald, Jr., attorney at law, Suite 1152 National Press Building. She said what kind of warrant and I said a series of criminal charges. I heard there was a warrant out for me, and she said she would look into it.

Q. Did you at any time — A. Later on she told me no.

Q. Did you have more than one conversation with Helen Gorman? A. I called up two or three times I think.

Q. What you call the second and third time, why did you [133] call? A. The same thing.

Q. If at any time did you ask Mrs. Gorman the name of John R. Willett appeared on the jacket, criminal warrants, or any other papers supposed to be connected with this criminal warrant? A. No, I asked her, you know Willett, he is a Judge in the Criminal Court, yes, I am familiar with him.

Q. I ask you the question if you asked her specifically the name John R. Willett, was on the docket, the records or any of the criminal warrants of her Court? A. You mean you were the Judge of the Court?

The Court: No.

The Witness: On this case? This particular case? No, I didn't ask her anything about your name being on this case. Your name isn't on this case.

By Mr. Willett:

Q. At any time did you go to the Commonwealth Attorney in Alexandria, the City Attorney to determine if a

warrant had been taken out against you? A. I have been down to see Earl Wagner if that is what you mean.

Q. When did you go to see Earl Wagner? A. I was down there, I had some correspondence with Earl Wagner who is a Commonwealth Attorney. Then I went down [134] to see him at the suggestion of this Court, Judge Bryan and suggested I go down there. I followed the suggestion and went down there on the fourth day of January, 1957. I went down there with Mr. Tankersley and Mr. Harrigan.

Q. I ask you whether or not there ever came a time prior to January 4, 1957, that you either personally visited Mr. Wagner's office or telephoned him? A. Before January 4? Certainly; he sent me a nice letter which is on file in this court at the Judge's request.

Q. When did you first go to Mr. Wagner's office? A. I don't know that. That didn't hold. I first went to Mr. Wagner's office—Mr. Wagner, the Commonwealth Attorney. I first went to his office on January 4, 1957 and at the suggestion and direction of this Court.

Q. Did there ever come a time you telephoned Mr. Wagner prior to January 4, 1957? A. No, I don't believe I ever talked with the gentleman. I never met him before that.

Q. Did you ever write? A. I wrote to Mr. Wagner, yes.

Q. When did you write? A. Before January 4, 1957.

Q. Would you tell me when you wrote him? A. I don't know.

Q. What was your present purpose in writing to him? A. Oh, to find out about this warrant.

Q. At any time did you ask Mr. Wagner? A. Or the warrants, I'm not sure the word should there were apparently [illegible]

Q. Have you ever been served with a warrant? A. I have been served many times. I want to give you the occasions. I was on my way—

Mr. Willett: Your Honor—

The Witness: You want me to answer that?

Mr. Laughlin: He was asked.

The Court: He was asked if he had ever been served with this warrant.

The Witness: This warrant.

The Court: Yes.

The Witness: Yes.

The Court: When was that?

The Witness: I was served with this warrant, your Honor, I was served in Maryland, in the State of Maryland, while I was on my way to defend my sister or to represent my sister. I was attending a scheduled hearing on a contempt action.

The Court: When was that?

The Witness: Let me see, in Rockville, Maryland. If you would let me refresh my memory by that civil suit that we have filed in Washington, D. C., I can tell you exactly.

[136] Mr. Willett: Could you tell us?

Mr. Ahern: May the record show I am showing him the complaints already on file in this case.

Mr. Willett: Is the complaint on file in this case?

The Court: Yes. Just look at the one Mr. Ahern has showed you.

The Witness: Precisely.

The Court: Come back to the stand.

The Witness: September 27, 1956, Rockville, Md. on my way to Court before the Honorable Anderson—

B. F. FitzGerald, for Pltf., Cross.

By Mr. Willett:

Q. What was the date? A. September 26, 1956.

Mr. Laughlin: I didn't know whether it was the 26th or 27th.

The Witness: 27th.

By Mr. Willett:

Q. At any time did John R. Willett enter any of the proceedings that were pending against Mrs. Thomas against Mr. Thomas in the State of Maryland? A. Well you and I had a series of correspondence relative to the Maryland matter.

Q. The question is very simple, at any time did John R. Willett enter any appearance in connection with the proceedings pending in the State of Maryland in the matter of [137] Thomas versus Thomas? A. You mean file a written appearance in the Court?

Q. Any appearance in the Court? A. You participated in examining of letters, appearances in that fashion; you didn't go into the Court physically if that is what you mean.

Q. Tell me what letters were exchanged? A. You and I carried on exchange of letters about the Maryland divorce matter. I have got them here. Would you like to have them?

Q. Yes, I'd like to have them so we can introduce them in the record.

Mr. Laughlin: The only observation I make is this, I want to object to this, Mr. Willett is a defendant in a case over in Washington. We haven't been able to serve him yet. We don't want him to use this proceeding as a vehicle to obtain some of our evidence when he has consistently refused to to accept process.

Mr. Willett: The allegations have been made in this case to the effect John R. Willett interfered in the Maryland case. I have said repeatedly from the time I entered my appearance, you will find it in the record at no time did I ever participate in the Maryland case or any criminal warrant. The only time I entered appearance was this case, Thomas vs. Cassidy pending in your Court.

[138] Mr. Laughlin: I must object. We are—

The Court: We are going a little far afield in going into the divorce case you mentioned.

Mr. Laughlin: I would object. He is making statements now. I submit they only should be received as such if he wants to testify, the stand is open.

The Court: The Court understands.

What is your question?

By Mr. Willett:

Q. If at any time John R. Willett entered appearance in the action pending in the State of Maryland—

The Court: What difference does that make?

Mr. Willett: It has to do with the warrant he says he was served in Maryland. I want to show I had nothing to do with the warrant. He testified at great length on direct examination, I was the instrumentality that I got the warrant, Judge Willett's Court.

The Court: This question does not go to that point. It is whether or not you were counsel in the Maryland case, has nothing to do with the issuance of the warrant here. I think the question is beside our inquiry. What is the next question?

By Mr. Willett:

Q. Mr. FitzGerald, have you at any time been informed by any official of the Commonwealth Attorney's office or the Civil and Police Court that John R. Willett assisted in any [139] way to get a warrant against you on any criminal charge? A. What is that again? Any official of the Alexandria Police Court?

Q. That is a representative or official? A. I haven't been in touch with anyone except that woman I told you.

Q. What is the answer to that question? A. No.

The Court: The warrant that you mentioned as having been served upon you September 27, 1956, was at Rockville, you say?

The Witness: Rockville, Maryland on the way to the Thomas case.

The Court: Was that an extradition warrant or was it the warrant that you have identified in this case this afternoon?

The Witness: If your Honor pleases, there were two warrants served on me, this warrant on that occasion to prevent me entering the Court to represent my sister in that proceeding, contempt of court against Mr. Thomas for failing to pay any alimony.

The Court: What was the other warrant?

The Witness: The other warrant was a fugitive warrant alleging I was a fugitive from justice.

The Court: From what source did that issue? [140] A. That emanated from the Maryland Court. As I understand this might help to clarify, somebody came over here from Alexandria with this warrant that you have just had, and presented it to the authorities in Maryland who then issued a fugitive warrant and I was then arrested by two officers, fingerprinted, photographed, placed under a

heavy bond and told to report in the Rockville Court before the Honorable Dimond on the specific case, which I did, and he released me.

By Mr. Willett:

Q. Mr. FitzGerald, when did you first find out that John R. Willett had any capacity as a junior substitute judge, about January 17, — A. Specifically, about January 17, of 1956, after I received a letter from you dated January 16, 1956, that you were representing Thomas and that you would as soon as you met Mrs. Cassidy, undoubtedly represent her, but you hadn't met her yet, hadn't even seen her. She was in Texas. That is what you said, something like that. I have got the letter with me if you would like to see that letter and make it part of this record.

Mr. Willett: I might as well stop at this point, if I can't have your assistance in compelling this witness to answer these questions.

The Court: Answer the questions.

The Witness: I'm sorry, your Honor.

[141] By Mr. Willett:

Q. Will you please state when you first learned John R. Willett was a substitute judge? A. January 17, 1956 was when I first learned it.

Q. How did you come about that information? A. In this fashion: I had been alerted by you, you were in the case. One of the first things I ever do is to see what the opposition is. I went and took steps to find out whether this was serious opposition or just what it appeared to be.

Q. Where did you get the information that John R. Willett was a judge or substitute judge? A. Confidential sources.

Q. You wouldn't care to disclose it? Oh, no.

Q. What effect would the fact that John R. Willett was a judge or substitute judge have in a case in the District Court? A. What?

Q. What connection would it have if John R. Willett had any connection with the case with the District Court in Alexandria? A. I don't understand the question. I don't know what you mean. I knew you were a judge. I knew you were attorney of record in this case because you filed your intention of being [142] attorney of record, on January 16, and you also filed your intention that you were attorney for Thomas. You said you were going to enter this case. You hadn't entered it yet, mind you.

The Court: In answer to that question, I think you ought to reframe it.

The Witness: Is that what you wanted?

By Mr. Willett:

Q. What connection or association if any did you make with the fact that John R. Willett was a substitute judge of the Civil and Police Court in Alexandria, with the case pending in United States Court, U. S. District Court in Alexandria? A. I don't understand that.

Mr. Laughlin: I don't understand the question.

The Court: I think what he has in mind is this, what significance in the Federal Court was Mr. Willett's position as substitute justice? Is that it?

Mr. Willett: Yes.

The Witness: You mean because of his judgeship did I think he had a right to practice in the Federal Court? I don't understand that question.

The Court: I think what he means is why was that question raised? That's why in the case pending in the federal court was the question raised or the point made that Mr. Willett held the position of substitute justice in the state side of it?

[143] The Witness: I see what you are driving at. When I was alerted by Mr. Willett on January 16, 1956 that he was about to appear as attorney for Mrs. Cassidy that he already represented Thomas, I made inquiry to determine what his background was to see how heavy he was in respect to that inquiry. I learned that he was a judge, a substitute judge.

The Court: That answers it.

The Witness: That answers it.

By Mr. Willett:

Q. Can you state when Benedict F. FitzGerald, Jr. allegedly committed the acts upon which the warrants were issued? When did this alleged breaking and entering supposed to have taken place? A. I believe the allegations are set forth succinctly in this warrant.

Q. What dates are they? A. Give me the warrant, I'll tell you, Plaintiff's Exhibit 1.

The Court: The warrant will speak for itself.

The Witness: It is set forth in there.

The Court: The warrant will speak for itself on that.

Mr. Willett: Yes. I want to give him the next question.

The Court: What does the warrant allege as dates of [144] commission of the offense?

Mr. Willett: On or about the 2d day of November 1955.

The Court: What is the date of the warrant?

Mr. Willett: 25th of November 1955.

The Court: What is the next question?

The Witness: That is your answer. That isn't my answer. Is that right? I didn't answer that question.

B. F. FitzGerald, for Pltf., Cross.

By Mr. Willett:

Q. Will you call on him to answer the question?

The Court: I think the question is answered by counsel reading as he just has done the dates out of the warrant.

By Mr. Willett:

Q. Tell me again when you filed this action in the United States District Court entitled Irene Thomas vs. Billie Cassidy? A. Civil Action—

Mr. Ahern: Would the action speak for itself?

The Court: One at a time.

The Witness: Civil Action 1245 was filed here the first week in November, 1955.

By Mr. Willett:

Q. Had you ever seen Miss Kline prior to February 9, 1956? A. Certainly she has waited on me many times. I have [145] purchased candy in there. That is right across the street from my office.

Q. Did Miss Kline know you prior to February 9, 1956? A. I wouldn't know that. She has filled orders for me and others have in there. I go in there on occasion. I wouldn't know. You would have to ask Miss Kline that.

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By Mr. Willett:

Q. When did you first find out her name was Beverly Kline? A. When did I first find out? On the night of February 9, she told me, when I met her in there after the candy had been purchased by Mr. Thomas. She introduced, gave me her name, I asked for the name. She gave it to me.

Q. How long did you state these out-of-state depositions [146] required on February 15, 1956? A. About 40 minutes.

Q. Is it your statement some forty-odd pages that has been turned in here as depositions was taken down; all the witnesses testified within 40 minutes? A. This deposition you have here is not 40 pages. I think it is about 36. There are a couple of certifications there, copied out of form books that might make up the 40 pages. It isn't a very long deposition.

Q. All right, 36 or 38 pages; is it your statement that required 40 minutes to obtain? A. That is about it.

Q. I believe you state— A. It might have been longer.

Q. How much longer? A. I don't know that. It went 40 minutes, roughly.

Q. Was it an hour, hour and a half or two hours? A. It could have been an hour, Mr. Willett. It could have been an hour; I don't think it was. I think it was about 40 minutes.

Q. I believe you testified the first time you found out Beverly Kline and Mac Wooten had met in the Willard Hotel when you were cross examining? A. That is my recollection. The best thing to do would be to check the transcript. Maybe if you would allow me to [147] refresh my memory I could be more specific.

Q. You didn't need any refreshing when you were asked on direct examination, you volunteered the information I am just examining on what you said about the benefits of any suggestions or depositions here today. A. That's right; I am asking you to refresh my memory to determine any inaccuracy. My recollection as I have indicated is that it came out on cross.

Q. I am asking you if you made a statement this afternoon in this Court on direct examination that the first time you found out about Beverly Kline or Mac Wooten meeting at the Willard Hotel was when you were cross exam-

ining the witness. A. That is what I stated. I say that is accurate according to my best recollection. The record would show whether it was something different. I'd like to consult the records to be sure of what I had said.

Q. I will show you a copy of the deposition and invite your attention to page 35. I will let you examine it. I will ask you. A. You haven't let me examine it yet.

Q. Just a minute.

Mr. Laughlin: Your Honor, may I step out of the room a minute while he is looking at that? Mr. Ahern will be here.

The Court: Certainly.

[148] By Mr. Willett:

Q. I invite your attention to page 15 rather than 35. A. This is the deposition of Miss Kline and Mae Wooten you are showing me.

Q. I invite your attention to page 15 of the deposition that has been turned into the Court. A. Right.

Q. I will ask you whether or not that deposition indicates that you on direct examination asked a question of Miss Kline about meeting at noon in the Willard Hotel.

The Court: What page was it?

The Witness: 15. That's right, there is a reference on page 15. I see the direct ends on 18. That would be indirect. The cross starts on page 29. I was four pages off. There is some reference.

By Mr. Willett:

Q. On direct examination I understood you to say that at the outset Benedict F. FitzGerald and John R. Willett went outside to someone's office and a threat was made; then the depositions were started. Did I understand you to say that after the depositions were started, you went

back out in the room again and more threats were made. A. Oh, no. No. That isn't what I said.

Q. What did you say? A. I said that the two young ladies came over there first. [149] You came in three to five minutes later with Thomas and Mr. Harrigan. And that we all went in to the office, my office. And that you summoned me out of the office because you wanted to speak to me. I followed you out, brought you to Mr. Ungpiedt's room. No deposition had started. Miss Pauline Gobel hadn't even shown up.

Q. Answer my question, at no time did you leave the room? A. Not while the deposition was going. I was there all the time. I had called it.

Mr. Willett: He has answered my question.

By Mr. Willett:

Q. At any time did you see fit after February 15, 1956, to contact Judge Woods or Judge Backus of the Corporation Court of the City of Alexandria to report this?

The Court: He said he did not report it to anyone; the reason he says he did not do it is that is not his custom.

The Witness: I never met the gentleman.

Mr. Laughlin: There would be a further reason too because these judges here would have no jurisdiction as to threats in the District of Columbia. As I understand it, you are referring to a threat I thought you were referring to a threat made in the office there. Maybe I misunderstood.

The Court: The threat counsel has in mind is the one characterized as a threat by the witness in reference to Mr. [150] Willett sitting in the case in Alexandria.

Mr. Laughlin: I misunderstood.

The Witness: I never met the gentleman.

By Mr. Willett:

Q. At any time have you ever been in the Civil and Police Courts in Alexandria? A. Yes.

Q. When were you down there?

Mr. Laughlin: I object. Don't see what that has to do with it.

The Court: As far as this case is concerned he said he went there on January 4, 1957 is my recollection in company with Mr. Barrigan.

The Witness: And Mr. Tankersley.

Mr. Willett: All right. Mr. FitzGerald, did there ever come a time you entered your appearance in this case and then withdrew?

The Witness: Yes, I did.

By Mr. Willett:

Q. What was the purpose of withdrawing? A. The purpose of withdrawing was I was told that Judge Bryan did demand my withdrawal. I had never met the gentleman until January 4. I was quite amazed at that, but I went ahead and withdrew on his demand.

Q. Who told you he had asked you to withdraw? [151] A. Mr. Brophy one of my associates I had hired here. It was about the first one. First I had Oliver Lloyd Orion. Then it was Poston. Then it was Mr. Brophy.

Mr. Willett: He has answered my question.

The Witness: That is it. He told me.

The Court: All right.

By Mr. Willett:

Q. At any time [illegible] the months of June, July and

August were you away from your office in Washington, D. C.? A. Where was this?

Q. June, July and August? A. I am away from my office all the time.

The Court: What year?

Mr. Willett: 1956, June, July and August.

The Witness: Yes, every year due to the peripatetic nature of my activities. I am away from my office intermittently all during the year.

By Mr. Willett:

Q. Can you tell me how many times you are away from your office? A. I couldn't tell you that; I don't have any recollection; I could find out for you. I travel the country a good deal.

Mr. Willett: May I have the opportunity to ask the question before he answers it?

[152] The Court: I think he answered it. He says he goes away intermittently.

The Witness: Due to the peripatetic nature—

The Court: Just a minute.

Mr. Willett: I didn't get to ask him specifically at any time during the months of August 1956 he was absent from his office.

The Witness: Yes.

The Court: Wait a minute. We are ruling on it now.

Mr. Willett: I first asked him June, July and August.

The Court: Haven't you been over that?

Mr. Willett: I want to know specifically in August.

The Court: Can you recall specifically when you were away at all in August?

The Witness: In August? No, of course not. No, your Honor, in and out all the time, all during the year, because of the peripatetic nature of my activities.

By Mr. Willett:

Q. Were you present here today to hear Miss Goebel testify within three months after she had taken the depositions on February 15, 1956 she made a draft and turned it over to you? A. Yes, I heard that testimony.

Q. Is that an accurate statement? [153] A. She didn't say that; that isn't my recollection of her statement. She said as I recall it, as I heard it, this morning her testimony was, that she typed out something and left it on my desk. Isn't that what she said?

Q. Did you ever find what purported to be a draft of the depositions taken on February 15, 1956, on your desk within three months after February 15, 1956? A. No, I don't recall that. I didn't hire her to take any deposition.

Q. You didn't hire her to take any deposition? A. No, she was hired as a notary. We had a dise made of this thing. She was hired as a notary. I didn't hire her to take the depositions.

Q. I am going to ask you point blank. I want you to be sure. A. You gave her some instructions, I didn't.

Q. Do you deny you were the person who contacted Pauline Goebel; asked her to record the depositions taken on February 15, 1956? A. I hired Pauline Goebel to take charge of, to preside as a notary over the hearing on Feb. 9, 1956.

Q. February 9? A. Right, I mean February 15, pardon me.

Q. Did you at any time ask her to record stenographi-

ically anything that was said on Feb. 15, 1956 in your office? [154] A. No, she is not a court reporter.

Q. Why was she there? A. As a notary.

Q. Didn't you say she was a notary? A. You were the one giving her orders. She stayed there on your request.

Q. You say I was the one? A. Definitely she accommodated you and everybody else did at the time.

Q. Let me finish the question. Did you contend John R. Willett ordered the services of Pauline Goebel to take the depositions? A. No, that isn't what I said. I here said I hired Miss Goebel to come to the deposition hearing as a notary. She came. She swore in the witnesses. And you made certain objections. And as a matter of fact, I think she was going to leave.

Mr. Willett: My question was simple; did you engage the services of Pauline Goebel?

The Witness: Yes, I did, yes.

The Court: He answered that, that he engaged her to swear the witnesses. His statement is that the reason she remained was because of your insistence that she remain. That is the answer that he gives to the question.

[155] By Mr. Willett:

Q. Mr. FitzGerald, at any time did you discuss with Pauline E. Goebel a draft of any of these depositions that were taken on February 15, 1956 prior to the time they were turned in this court? A. She never turned anything in of her own to this Court as she testified this morning. You mean did I talk about the notes that she made or that she testified this morning?

Q. Yes. A. Yes, I think we discussed something like

that. She said she had made some notes. I said well, that's fine. Why don't you give them to Willett.

Q. You said to her? A. Yes.

Q. Did you ever receive a copy of a draft? A. No.

Q. Let me finish; did you ever receive a draft of any notes that Pauline Goebel took down on February 15, '56? A. No.

Q. You never found the copy she said she left on your desk? A. She probably did.

Q. But you didn't see it? A. No.

Q. So at no time could you have discussed with Pauline [156] Goebel that her draft pertaining to this deposition at any time after February 15, 1956? A. Well, my answer to that is yes, we discussed several things, yes. We discussed something about some notes that she had made, but I didn't see the notes and I wasn't interested in them.

Q. You did not see the notes? A. No.

Q. Why is it if you didn't see the notes, let me ask you this first, did there ever come a time that you had transcribed what was reported to have been the depositions taken on February 15, 1956 in your office? A. Yes, I had them transcribed.

Q. Did there ever come a time you took them to Pauline Goebel to sign? A. Yes.

Q. Why would you take them to Pauline Goebel to sign if she was just to be the notary public and not the person to be paid to record them? A. You were writing her letters; you wanted the deposition filed in court and the judge finally decided for the first time on January 4, '56 that the depositions should be filed.

The Court: '57, you mean?

The Witness: '57. I'm sorry. You apparently were [157] retained in your office arguments on the other

depositions. [157] We decided to file them, so I brought them in for her to certify.

Mr. Willett: Whom do you mean when you say "we"?

The Witness: I mean we, the plaintiff, attorney.

By Mr. Willett:

Q. At any time did Mr. Harrigan, Brophy, Tankersley tell you that Judge Bryan indicated in an order in open court in January 1957, that if John R. Willett would pay for a copy of the depositions that Pauline Goebel would have to transcribe them? A. I was here on January 4, 1957. I participated in that hearing.

Q. Did you hear Judge Bryan say if I pay the money— A. That's right.

Q. Why didn't you interrupt at that time; I shouldn't direct my money to Pauline Goebel. A. Why I didn't interrupt; I've been going through quite a bit here, never been allowed to talk; I've never been allowed to participate; I wanted to get up all the time and talk. You haven't allowed me to talk. Why should I volunteer anything. I haven't been allowed to participate in this case since January 4, 1957 when I have been in here because of you.

The Court: That is answered. What is the next question?

[158] By Mr. Willett:

Q. My next question is can you state why the Court wasn't apprised of the fact that the money should have been paid to you rather than Pauline Goebel for transcribing these records? A. What was that again?

Q. Can you state why the Court wasn't informed or why John R. Willett wasn't informed that his money

should be directed to you in order to get a copy of this transcript rather than Pauline Goebel? A. My previous answer. I have been trying to say something here for the last three occasions but I have not been allowed to participate and say anything on account of you.

Q. I invite your attention specifically to January 23, 1957. I ask you whether Judge Bryan gave you the opportunity to testify if you wanted to do so voluntarily? A. January 23, 1957.

Yes, I want to participate as an attorney. He gave me the opportunity to testify, but I wanted to participate in this case as attorney. You objected to it.

Q. I asked if you were given opportunity to say anything that you wanted to, provided you would take the stand on January 23, 1957? A. If I took the stand—

Mr. Laughlin: Of course, your Honor, I am just [159] wondering. I think we ought to have a little consistency. You must remember Counsel Willett has absolutely refused to take the stand.

The Court: Don't go into that part now. I think you have covered the ground of your present interrogation. The witness has answered it. Let's go to something else.

(Recess.)

The Court: Mr. Willett, haven't you covered the ground that is within the scope of cross-examination?

• • •

[169] By Mr. Willett:

Q. Did you at any time or anyone for you find it necessary to turn the record over on which all of this transcript was allegedly being recorded. A. The date is February 15, 1956.

B. F. FitzGerald, for Pltf., Cross.

Q. Yes. A. Yes, I did.

Q. You did that? A. Yes, in front of you.

Q. It is your contention this machine was playing all the time? A. Yes, from the time the deposition commenced, I turned it on, I turned it off.

Q. Have you ever destroyed this disc? [161] A. I don't believe I destroyed it. It might be around the office somewhere. I haven't been able to find it. But my office has been rather confused since that secretary of mine has departed.

Q. Did you consider that that disc might be important isasmuch as we have had such a delay in transcribing these notes? A. No, it has been certified by three or four people here. Miss Kline has indicated that many portions of it are accurate. I didn't see any need for the disc.

Q. You don't know whether the disc has been destroyed or not? A. No.

Q. May I ask you this question? What did Miss Kline say on Feb. 15, 1956, in your office, in response to a question how did Mr. FitzGerald introduce himself when he went into your store on Feb. 9, 1956? A. She said—

Mr. Laughlin: The objection I would make isn't that in the deposition?

Mr. Willett: Which deposition?

Mr. Laughlin: The deposition of Feb. 15, 1956.

The Court: Let's ask it this way as you recall what she said, what did she say?

The Witness: Well, she said, my recollection is [162] it is the same as in the deposition that is a part of this record

Mr. Willett: What is that, sir?

The Witness: That, what is that? Give it to me and I'll read it.

The Court: I think that answers the question.

By Mr. Willett: Then Mr. FitzGerald, I ask you if you have ever had occasion to write a letter to Beverly Kline on or about Feb. 21, 1956?

The Witness: Yes. I don't know the exact date. But the letter that was put into evidence in this court were the love letters of Billie Cassidy, that is a letter that I sent out to Miss Kline.

By Mr. Willett:

Q. Are you familiar with that letter of Feb. 21, 1956? A. Am I what?

Q. Are you familiar with the contents? A. You showed it to me before you put it in evidence. That is the one I wrote.

Q. I ask you specifically why in that letter you indicated to Miss Kline on Feb. 21, 1956, I am quoting from the paragraph— A. What paragraph?

Q. Paragraph 3, on page 2. "I want you to know I [163] appreciate your assistance and want to clarify any confusion you had that I was working for any branch of the government".

Did you write that on Feb. 21? A. Oh, yes, I recall that very accurately.

Q. Why did you write that to her? A. The reason I wrote that—

Mr. Laughlin: I don't think that serves any purpose here. Then that is going to lead to other questions.

The Court: I think so too. I think you had better bring it to a close. He says he wrote the letter. The

letter speaks for itself. I think you have covered the ground quite thoroughly.

Mr. Willett: All right.

The Court: Let the witness stand down.

Mr. Laughlin: I have nothing further.

(Witness excused.)

The Court: Call your next witness.

Mr. Laughlin: I think that may be all, if you will allow us just a moment, your Honor.

We have no further testimony, your Honor. I think the only thing remaining from our point is the matter of those letters. Did your Honor want to fix a time on those now?

The Court: Does either side want to argue the case?

* * *

[164] Mr. Ahern: Actually that is the point. Maybe Mr. Laughlin overlooked technically Mr. Willett has never done that. He has not filed a motion pursuant to the rules if he was going to contend that your Honor the rules, the taking [165] of a deposition by a disk was contrary to the federal rules, therefore it could be dismissed for failure to comply with the rules, he was obligated within a reasonable time to file a motion, your Honor, under the rules. He has never done that. I am not sure unless your Honor entertains as oral motion that the motion is before you that the only question before you here now is the admission of Mr. FitzGerald.

The Court: I will take the record as it stands. Let Mr. Laughlin go ahead.

* * *

[1] **Exhibit 3.**

DEPOSITIONS OF FEBRUARY 15, 1956.

* * *

DEPOSITION OF BEVERLY KLINE AND MRS. MAE WOOTEN OF THE RUSSELL STOVER CANDIES, F ST., N. W., WASHINGTON, D. C.

Discovery Proceedings.
February 15, 1956.

[2] Depositions of Beverly Kline and Mae Wooten, taken on behalf of the plaintiffs, for the purpose of discovery, in the above entitled action now pending in the United States District Court for the Eastern District of Virginia, pursuant to the attached notice, marked Exhibit One, for identification, at the offices of Benedict F. FitzGerald, Jr., Attorney At Law, Suite 1152, National Press Building, Washington 4, D. C., on February 15, 1956, beginning at three o'clock p. m., before Pauline Goebel, a Notary Public in and for the District of Columbia.

Appearances:

Benedict F. FitzGerald, Jr., Esq., 1152 National Press Building, Washington, D. C., on behalf of the plaintiff;

John R. Willett, Esq., 1705 Fern Street, Alexandria, Virginia, on behalf of the defendant.

Present:

Beverly Kline,
Mrs. Mae Wooten,
Jay H. Thomas, Jr.,
Edward D. Harrigan, Esq.,
Bernice Ruth.

Exhibit 3—Depositions of February 15, 1956.

[4] PROCEEDINGS.

By Mr. FitzGerald: Now Miss Goebel we are gathered here today to take a deposition for the purpose of discovery, pursuant to notice served on Beverly Kline and Mrs. Mae Wotten of the Russell Stover Candies, 1343 F Street NW Washington, D. C. And here today are the two ladies who appeared, pursuant to notice, which was given under The Federal Rules of Civil Procedure. In attendance you will please note the appearance of Attorney John R. Willett, Esq. of 1705 Fern Street, Alexandria, Virginia, counsel for Mr. Jay Harry Thomas, Jr.—Mr. Thomas is at his side—He is the defendant in this action, in the case of Thomas versus Cassidy, Civil Action numbered 1245 now pending in the United States District—.

By Mr. Willett: Mr. Thomas is not the defendant in this—

By Mr. FitzGerald: —Court for the Eastern District of Virginia—Oh pardon me, Mr. Willett is right, Mr. Thomas is not a defendant in this action—I was thinking about the divorce action now pending in the Circuit Court for Montgomery County, Rockville, Maryland. The case of Thomas v. Thomas, Equity Action 18570, in which he is charged with adultery, as a defendant. In view of the fact that he is not a party, maybe we ought to ask [5] him to leave—since he is not a party—I wonder— why he came—He has me confused. Do you have any objection Mr. Willett if we suggest that your client Mr. Thomas leaves because as you have pointed out he is not a party in this proceeding nor do we have any deposition scheduled for him today.

By Mr. Willett: He came here with me and this is a public hearing. I have no authority to order him to leave.

By Mr. FitzGerald: I think that he ought to leave, be-

cause he is not a party and he was not invited to attend. I have no desire to have him here at this time. Although I have no personal animosity toward him, this is a small room, the air is congested--Would you please step out Mr. Thomas. You will find a reception room just behind the door and there are some magazines that you might want to look out, or at.

By Mr. Willett: I have no objection—I'll see you later, wait.

(Mr. Thomas rises, opens the door and exits.)

By Mr. Thomas: I'll see you later outside.

By Mr. Willett: I would like to make a statement at this point although I represent Mr. Thomas and have been his attorney for some time, I am here today with him only as the attorney for the plaintiff in this action Mrs. Billie Smith Cassidy [6] and not Jay H. Thomas, Jr. I want to note in this record that depositions are now being taken of two ladies of the Russell Stover Candy Company pursuant to a notice sent out by Mr. FitzGerald—.

By Mr. FitzGerald: You mean don't you that you represent the defendant Mrs. Cassidy. She is the defendant and not the plaintiff—. I represent the plaintiff, Mrs. Thomas.

By Mr. Willett: Oh, yes—Where is the notice, you didn't send me one. Or did you. Maybe Thomas has it.

By Mr. FitzGerald: Are we ready yet, do you have anything else to say? I will give you my copy of the notice. Please mark this Notice, Plaintiff's Exhibit Numbered One for identification.

By Mr. Willett: No I don't want yours. I have one here somewhere.

By Mr. FitzGerald: I want to put Plaintiff's Exhibit Numbered One in evidence—Would you please proceed then

let the witnesses be sworn by the Notary and she will administer the usual oath.

By Mr. Willett: All ready.

[7] By Notary:

Q. Will you please stand—Now raise your right hand and answer after me. Do you solemnly swear that you will tell the truth the whole truth and nothing but the truth, so help you God, in the proceeding that we are about to hold:

By Beverly Kline:

A. I do.

By Mrs. Mae Wooten:

A. I do.

By Mr. Willett: My goodness, let's see where we are. Inasmuch as Mrs. Wooten of the Russell Stover Candy Company was not served with notice —I am advising her that she does not have to testify unless she wants to. No one can require her to testify here.

By Mr. FitzGerald: Well I guess if she doesn't testify here today she will have to come again. If you didn't like the first notice we can send another notice and ask her to come again. Did you receive a notice Mrs. Wooten. Why did you come here today if you didn't receive a notice?

By Mrs. Wooten:

A. Well I knew there was going to be a hearing that is why I came and Judge Willett advised—.

By Mr. FitzGerald: Well if you don't want to testify now let's [8] examine Beverely Kline first and we can argue about that point later on. Are we ready

to proceed yet. We are commencing a marathon—No testimony has been taken yet—and we've been here an hour—

By Mr. Willett: Yes, let's not hold up the hearing. Go ahead take the deposition of BEVERLY KLINE first. Mrs. Wooten might not want to testify inasmuch as you have not the authority to require her to do so without serving a notice, and she said that she didn't receive one—.

By Mr. FitzGerald:

Q. Now Miss Kline would you please give us your full name?

By Beverly Kline:

A. Beverly Kline.

Q. That is K L I N E? A. Yes.

Q. And what is your home address, if you please? A. 4109 Rainer Avenue, Mount Rainer, Maryland.

Q. Were you employed as a sales lady for the Russell Stover Candies, 1343 F Street, N. W., Washington, D. C. on February the ninth, 1956 at approximately seven in the evening? A. I was a clerk there a part time one.

Q. Did you, on that time and place have occasion to meet one Jay Harry Thomas, Jr., the gentleman who [9] was asked to leave this room, a few moments ago and who is in the other room? A. Yes, I met him for the first time on February 9, 1956.

Q. I show you Plaintiff's Exhibit Numbered Two for identification and ask you if this is a picture of the same

Exhibit 3—Depositions of February 15, 1956.
B. Kline, for Pltf., Direct.

Jay Harry Thomas, Jr. who came into your store on the night of February 9, 1956? A. Yes.

Q. Will you please tell us how you first came to meet him?

By Mr. Willett: I object to the form of this questioning—on the grounds that it is leading. You can't use pictures during a deposition hearing.

By Mr. FitzGerald: Please note the objection and Miss Kline please continue.

By Miss Kline:

Q. What did you say about the picture?

By Mr. FitzGerald:

Q. Will you please tell us how you first came to meet the picture—I mean the man in the picture—. A. Mr. Thomas came into my store or where I worked and told me he wanted to buy a box of candy. So I took his order.

By Mr. FitzGerald: [10] Mark Mr. Thomas' picture, Plaintiff's Exhibit Numbered One or rather Two, Plaintiff's Exhibit Numbered Two for identification, please—

Q. How much was the purchase? A. It was a heart-shaped box of valentine candy and it cost him three dollars plus sixty-five cents for the postage to mail it to the person he told me to mail it to.

Q. Whom were you instructed to mail it to?

By Mr. Willett: I object to the leading questions—.

A. What did you say?

By Mr. FitzGerald:

Q. Who were you told to send the candy to? A. By whom?

Exhibit 3—Depositions of February 15, 1956.
B. Kline, for Pltf., Direct.

Q. By Mr. Thomas? A. The candy was ordered sent to a party in Texas— Dallas, Texas, I have the sales slip he filled out with me in my purse here somewhere—Do you have it Mr. Willett—?

Q. Was the party Mrs. Billie Smith Cassidy?

By Mr. Willett: I object to this form of questioning leading and irrelevant and irreverant or irrelevant.

By Mr. FitzGerald: Please note the objection.

Q. Please answer the question, Miss Kline. [11] What is the answer? A. Yes, Billie Smith Cassidy of Dallas, Texas, 6831 Lorna Lane, Dallas, he wrote on the sales slip.

Q. Now, how do you know this of your own personal knowledge? A. Well I was there. I took his order. Mr. Thomas told me to mail it. He was given the sales slip here and he filled it out himself. He filled in the address and completed the order and I took the sale for that purpose that he requested and as a clerk that is my job and my responsibility. He filled in the complete order and I merely took the sale from him. I received it—All customers tell us where the candy is to go if they want us to mail it.

Q. Did he give you anything besides the three sixty five? A. Yes he did. He made a small purchase of around twenty-five cents. He carried that away for himself.

Q. Did he give you a letter to send with that heart-shaped box of candy? A. Yes, he sat down and wrote a note and put it in an envelope to send with it. They all do that.

Q. Did you bring that note with you today? A. Yes, I have it with me here—somewhere—.

Exhibit 3—Depositions of February 15, 1956.
B. Kline, for Pltf., Direct.

Q. Now will you show us first the sales slip that you say was filled out by Mr. Thomas directing you to mail a heart-shaped box of candy to Billie Smith Cassidy?

[12] By Mr. Willett: I object. Don't show him anything. He has no—

By Mr. FitzGerald: She has shown it already.

Q. Is that the sales slip? A. Yes, here it is.

(Witness produces a piece of paper.)

Q. Does this—what you have just shown us—purport to be a sales slip filled out by Jay Harry Thomas, Jr., numbered C as in Charlie 22033? Was this made out by that gentleman Jay Thomas, Jr.? May I read it to you? It reads To: Mrs. Billie Cassidy, 6831 Lorna Lane, Dallas, 14, Texas? A. Yes, he wrote that or it?—Yes he did.

By Mr. Willett: I want to object to that. She doesn't know Thomas' handwriting. I want to object because there is no proof that Mr. Thomas in fact personally executed this instrument. The girl never saw Thomas before this was the first time that she saw him. She didn't recognize his signature. This is an improper way to get this in the record.

By Mr. Willett: Don't answer.

By Mr. FitzGerald: This is only for discovery purposes. This is not [13] a trial.

Q. I would like to ask you again Miss Kline did Mr. Thomas fill out this sales slip which is numbered C 22033 and which we will refer to for identification as plaintiff's exhibit numbered three. Please mark this number three.

By Mr. Willett: I object. Your not noting my objection.

Exhibit 3—Depositions of February 15, 1956.
B. Kline, for Pltf., Direct.

By Beverly Kline:

A. Yes that is a copy of what he filled out.

Q. And he filled that out himself? A. Yes he filled in that order they all do.

Q. Now was there any other information that you got from Mr. Thomas? Did he give you a letter or anything to send to Texas with that package? A. Yes this note.

(Witness displayed an envelope approximately two # three inches, marked "Billie".)

By Mr. Willett: Give that to me. That doesn't belong to him.

By Mr. FitzGerald: Pass it here if you please this is a real find.

By Mr. Willett: Don't give him anything. Don't answer. I object to anyone opening anything. I object to signed and sealed letters. There is not legal access to that. That belongs to—my client.

By Beverly Kline: [14] Well what will I do with it.

By Mr. Willett: Well let him have it but don't let him open it.

By Mr. FitzGerald: (Receives and examines note.) Very interesting literature. Be sure and preserve an objection while I participate in the discovery proceedings. That is what we are here for today for discovery, and this is a discovery—or is it.

(Note is returned to Beverly Kline.)

Q. Now Miss Kline are sure or are you sure that this is the note which contains a note which bears on the envelope "Billie" which was given to you on the night of February 9, 1956 by Mr. Jay H. Thomas, Jr.?

Exhibit 3—Depositions of February 15, 1956.
B. Kline, for Pltf., Direct.

By Beverly Kline:

A. Well I guess so. Mr. Thomas gave me a small note marked "Billie". He told me to mail it with the heart-shaped valentine candy to Billie Cassidy to Dallas, I gave the note to Mrs. Wooten and she held it or gave it to the lawyer.

By Mr. FitzGerald:

Q. Was it switched? A. What do you mean?

Q. Has Jay H. Thomas, Jr. been in touch with you since February 9, 1956, the night that you say he purchased this candy? A. Yes, I—

[15] By Mr. Willett: I object. And note my objection. Don't answer. That is not competent.

By Mr. FitzGerald: Note the objection.

Q. Miss Kline when was Mr. Thomas in touch with you since he entered your store on the night of February 9, 1956? A. Yes, I met Mr. Thomas with Judge Willett at the Willard Hotel, this noon when Mrs. Wooten told me to go over there with her and to see them both in the lobby just before we came in here.

Q. Oh, a secret session at the Willard? A. Well we were advised to talk it over with them first at the Willard —the judge—.

Q. Now tell us what took place at this interesting little meeting that was scheduled immediately before this deposition proceeding unknown to the rest of us? A. Well—

By Mr. Willett: Now I object to that question and instruct Miss Kline not to answer. Unless you can show the purpose of that question that is not a proper question to ask in a deposition hearing.

By Mr. FitzGerald: Please note the objection.

Exhibit 3—Depositions of February 15, 1956.
B. Kline, for Pltf., Direct.

That will be taken up later. Would you please answer the question. Tell us what went on, if anything between Mr. Thomas, Mr. Willett, and yourself and Mrs. Wooten at the Willard Hotel, immediately.

[16] By Beverly Kline:

A. Well, Mrs. Wooten and me—saw Mr. Thomas who introduced me to Judge Willett who asked us about the candy slip and the note that Mr. Thomas has filled out and ordered sent to Billie Cassidy for Valentines day—.

Q. How did you happen to meet Mr. Thomas there with his counsel, Judge Willett?

By Mr. Willett: Mr. Thomas and I had a perfect right to meet with these ladies. There is no law against it. I represent Mr. Thomas. I object to any further questioning of the witness about what I and my client said or did at the hotel. Don't harass the witness and note my objection. You're not dealing with Thomas now. Whom you asked to leave this room.

By Mr. FitzGerald: Please sit down. Note Mr. Willett's objection for the record. Your objection will be preserved but this is merely for discovery. Perhaps you would like to move your chair, Mr. Willett, away from the draft.

By Mr. Willett: You can't order me around. Like you did to Thomas. I object to any further questions about the Willard. The information that you are attempting to obtain occurred after you sent out the notice to take the deposition. This meeting occurred later. Get the fact that I'm objecting on the record.

[17] By Mr. FitzGerald: You will have an opportun-

ity to develop that later when you examine. Now Miss Kline would you tell us if you care to how it came about that you had a meeting with Jay H. Thomas, Jr. and his counsel Mr. Willett immediately before this deposition proceeding?

A. Well I believe it was the lawyer—Mrs. Wooten handled or handles it, she is my boss.

By Mrs. Wooten: The Kansas City office—.

By Mr. Willett: I object and advise Miss Kline not to answer these questions.

By Mr. FitzGerald: Mrs. Wooten. Please don't coach the witness. Mrs. Wooten, you will have an opportunity to testify later on providing you so desire. We wanted to examine you first but you or rather Mr. Willett advised you not to talk. If you desire to overlook Mr. Willett's admonition we will examine you after Miss Kline has spoken.

Q. What took place at the Willard? Has that been answered? A. Well at the suggestion of someone we talked with Mr. Thomas and Judge Willett and he told us—I think that I am confused this is only fair to say that I am only a part time clerk in the candy store—this case is of no concern to me and I am sure that the Russell Stover Candy Company does not want to be involved. And Mr. Willett—.

[18] By Mr. Willett: And you have a machine going too—that is illegal, make a note of that—and the stenographer is your secretary—note that too, I object to her taking this down.

By Mr. FitzGerald: Note the objection and the place is bugged—

Q. What took place at the Willard?

Exhibit 3—Depositions of February 15, 1956.
B. Kline, for Pltf., Cross.

By Beverly Kline:

A. Should I answer, Judge Willett?

By Mr. Willett: I suggest that you refuse to answer any further questions.

By Mr. FitzGerald:

Q. Is the note marked "Billie" that you saw the original note that Mr. Thomas gave you, or was it switched. Look at the envelope, please? A. I don't know—Mrs. Wooten told me to give it to her—After Thomas wrote her. And at the Willard—

Q. In other words the original note has been out of your possession since February 9, 1956? A. Yes. But it looks like the same but I didn't read it.

By Mr. FitzGerald: No further questions, Mr. Willett, you may inquire.

[19] By Mr. Willett:

Q. Now, Miss Kline, what time of day was it that Mr. Thomas appeared at your store to make this purchase of February ninth? A. At night time.

Q. What hour at night? A. About seven.

Q. Did any other person appear in the store that night? A. Yes there were a lot of people.

Q. Did Mr. FitzGerald come in the store that night after Mr. Thomas came in? A. Yes.

Q. Now do you recognize this man as the person who came into the store. A. Yes.

Q. Now please state for the record exactly what conversation Mr. FitzGerald had with you when he came in. And get this down on the record. A. Mr. FitzGerald came in and asked me about who was making purchases. He said

he was investigating something but didn't want to ask me any names but he wanted me to make mental notes.

Q. What else did he say? A. He said Mr. Thomas had been or was being followed. That he was difficult to find, had no address except a box number in Washington. That he had spoken to the F. B. I. about him.

[20] Q. What else did he say. Tell us about when he told you he was with the F. B. I. A. He said he wanted to know if Thomas had purchased candy in the store. That he had talked with the F. B. I. Now it is you know against the company rules to give out information and he should have known that. But he said he didn't want to examine me but that he wanted me to make a mental note because I would be examined later. I never had an experience like that before and no one conducts investigations like that—He told me an investigator would be in touch with me and he gave me a card of his with his name on it, I have it here somewhere with me.

Q. What did he say about the F. B. I.? A. I am sure that he mentioned the F. B. I. All I could think of was the F. B. I. Then he insisted that I sell him candy like I sold to Thomas.

Q. What else did he do? A. He gave me a five dollar bill and asked me for candy like I sold Thomas that same night. And he then gave me an order and told me to mail it to some place in Washington. Oh yes, he asked me if the purchase that Mr. Thomas had made went to Texas. Of course I would not tell him that because that was against the company rules. He then said to make a mental note because later on I would perhaps have to testify in court even though I did not tell him then.

Exhibit 3—Depositions of February 15, 1956.
B. Kline, for Pltf., Cross.

[21] Q. Did he give you some money? A. Yes he paid for the candy that he purchased.

Q. Did he attempt to give you additional money? Or did he try to make you take more money? A. Yes he gave me five dollars and told to or told me to keep the change. I refused to take the money, that is the change that was left and reported it to Mrs. Wooten. We are not allowed to take money.

Q. You say he gave you the money and to keep the change for your trouble? A. Yes he said for your trouble.

Q. Did you have any trouble? A. Oh no that is quite improper, to take tips.

Q. Did you receive tips in your work from other customers often? A. Oh no, we never receive tips, that is against the rules, isn't it, Mrs. Wooten?

Q. What else did he say? A. He told me to make mental notes, and he gave me his card with his name on it.

(Witness produces a card.)

Q. Now you said Mr. Thomas had entered the store before Mr. FitzGerald. A. Oh yes.

Q. Did you see Mr. Thomas fill out the sales slip. A. Yes.

Q. Did you see him write it out personally? [22] A. Well no, I gave him the sales slip, and as is usual I asked him to fill it in. Then I went to look to the candy and when I came back he had filled it out.

Q. Then you have no personal knowledge that Mr. Thomas filled out this sales slip that has been discussed. A. No I gave it to him and told him to fill it out.

Q. Now will you indicate whether or not you had approached your employer and advised her that you had been approached by the F. B. I.? A. Yes, I told Mrs. Wooten

Exhibit 3—Depositions of February 15, 1956.
B. Kline, for Pltf., Cross.

that an investigation was made and Mr. FitzGerald gave me this card. I never was questioned like that before.

Q. Now will you please state whether or not you got a telephone call that same day? A. Yes, we got a phone call, or rather Mrs. Wooten told me all about that.

Q. Now did you later get a notice to appear that day for a hearing. A. Yes.

Q. Did a man give you a paper and tell you about this hearing? A. Yes he did. He came over with a notice and a check for three dollars and I had a conversation with him.

[23] Q. Did he say that he was a United States Marshal? A. No.

Q. What did he say? A. He said I was to read the paper that he had in his hand and some attorneys would be up in the Press Building next week and I was to go up there with the sales slip.

By Mr. FitzGerald: Are you objecting to the service of the deposition papers on this witness.

By Mr. Willett: No, I am not objecting to you telling everyone that you are a member of the F. B. I. and I intend to develop that and take that up with the F. B. I. get that on the record all about the F. B. I. and I'll see that you hear from—

By Mr. FitzGerald: Take it easy John boy—Keep cool—I want the record—

By Mr. Willett: Don't interrupt you—Get this on the record—and to you—turn off that machine—I'm not Thomas—he told me all about you and what you—

By Mr. FitzGerald: I would like the record to reflect that I have never represented myself as a member of the F. B. I. that I am not a member of the

Exhibit 3—Depositions of February 15, 1956.
B. Kline, for Pltf., Cross.

F. B. I. and [24] that the very card that I gave Beverly Kline when I first talked with her that she has produced here today identifies me by my full name and address and sets forth clearly that my position is an attorney-at-law with offices at Suite 1152, National Press Building, Washington 4, D. C. And I would like to mark the card that Miss Kline has produced today as the Plaintiff's Exhibit Numbered Four, for identification. And to further clarify any misapprehension that you feel might exist, I would like to offer the check that was given to Miss Kline by my office on the ninth day of February 1956, numbered 606, drawn on the Riggs Bank, bearing my identification as "Counsellor at law,—which check was I presumed endorsed—do you have it Miss Kline—and which I will offer for the record as exhibit numbered five, if and when it is returned or cashed by Miss Kline—.

(Card marked Exhibit Four.)

By Mr. Willett: I object to the card she has—I want the record to show that he is a government—.

By Mr. FitzGerald: You saw it at the Willard—.

By Mr. Willett: I object to the speeches. To the card. To the check. I object to you and to her and to him. Be sure and get this down and turn the machine off of—.

[25] By Mr. FitzGerald: Please note his objections and my objections to this entire line of examination which commenced for the purpose of discovery—to simply determine whether or not a heart-shaped box of valentine candy was purchased by Jay Harry Thomas, Jr. on February 9, 1956 and forwarded to

the defendant Mrs. Billie Smith Cassidy. Mr. Willett has gone far afield. This line of questioning is irrelevant, immaterial and incompetent, he has already threatened me with criminal prosecution now he wants to stir the F. B. I.—.

By Mr. Willett: Note my objection. Get that down.

By Mr. FitzGerald: What do you suppose—.

By Mr. Willett: I have no further objections, I mean questions.

By Mr. FitzGerald: Have we reached a conclusion as to whether or not the first witness desires to give her evidence or testimony at this time? Or are you going to rely on counsel and refuse to testify and do we have to send out another notice and go through this deefa daba—all over again?

By Mr. Willett: Now, Mrs. Wooten, if you please, I am not your attorney. But you do not have to testify at [26] this time if you don't want to. Don't let him harass you. You have not been served with a notice and you don't have to testify. Your at liberty to answer or refuse because you were not properly served. And get this on the record you—.

By Mr. FitzGerald:

Q. Mrs. Wooten let me ask you a few questions about service if I am please. Or do you want to refuse upon advice of counsel?

By Mr. Willett: Now Mrs. Wooten you don't have to answer that or pay attention to him whatsoever. Refuse now. You can go home now—let's all.

Exhibit 3—Depositions of February 15, 1956.
Mrs. M. Wooten, for Pltf., Direct.

By Mr. FitzGerald:

Q. Mrs. Wooten did you receive a notice to take your deposition?

By Mrs. Wooten:

A. Yes.

Q. When did you receive that? A. Saturday.

Q. Now when Mr. Willett represents the fact that you did not receive a notice to take your deposition he is in error, is he not?

By Mr. Willett: I want to point out for the record clearly that I am not counsel for Mrs. Wooten but that she is privileged to raise any objection. Because she has not been properly served. She does not have to [27] answer unless she wants to.

By Mr. FitzGerald:

Q. I show you Plaintiff's Exhibit numbered One for identification and ask you find it—please,—I ask you if this is a true copy of the notice that you received at your office to take your deposition.

By Mrs. Wooten:

A. Yes that appears to be a copy of what I received.

Q. Now did you note the fact that you were to come here to my office, my name as an attorney was there wasn't it? A. Yes, I knew that your office was here but Mr. Thomas and Judge or Mr. Willett told me I should—.

By Mr. Willett: I insist that my objection be noted and that although she received this notice that it was not proper service. It came through the mail. You know perfectly well what I am trying to establish no one served her. The mail—.

Exhibit 3—Depositions of February 15, 1956.
Mrs. M. Wooten, for Pltf., Direct.

By Mr. FitzGerald: Let the record reflect his objection and indicate that he protests the use of the United States Mails to request an attendance at a deposition proceeding. Maybe we should have sent the militia—.

[28] By Mrs. Wooten:

A. Yes, I received a copy in the mail.

Q. Do you have it with you? A. It is around someplace.

By Mr. Willett: I suggest that the record clearly show that she wasn't served by a United States Marshal. A marshal must serve all papers. If he doesn't the service is no good. You don't have to testify. Let us all go home right now.

By Mr. FitzGerald:

Q. Mrs. Wooten, what is your position—Do you—? A. I am the manager.

Q. Manager of the Candy Company? A. Yes.

Q. How long have you been in that position? A. Several years.

Q. Did you ever see me before? A. Yes I saw you the night that you came in the store and purchased candy.

Q. Did I talk with you that night? A. No, but you talked with Beverly. And I saw you there while I was handling the other customers. However I talked on a phone one night with someone who said he was Inspector Flaherty, a private investigator and that was you or your voice was like his.

[29] Q. Are you Miss Kline's immediate supervisor? A. Yes.

Q. Did you have anything to do with the sale of candy to Jay H. Thomas, Jr.? A. No, Beverly handled that.

Exhibit 3—Depositions of February 15, 1956.
Mrs. M. Wooten, for Pltf., Direct.

Q. Are you the same Mrs. Wooten that Beverly Kline identified as meeting with Mr. Willett and Mr. Thomas at the Willard Hotel, immediately before this scheduled deposition proceeding. A. Yes.

Q. How long did you meet with Mr. Willet? A. I don't remember exactly.

Q. Did Mr. Willett ask to see any of the evidence which was produced here today? A. Yes, I showed it to him and Mr. Thomas they saw the sales slip and the—.

By Mr. Willett: I want to object to this whole line of questioning. This notice was sent out on the ninth day of February 1956. The nature of this type of questioning could not possibly be to anything that took place between Thomas and me and Mrs. Wooten at the Willard Hotel during our—.

By Mr. FitzGerald: Note his objections.

Q. What took place at the Willard? [30] A. He said, Judge Willett said, he was investigating. He wanted to know what you had said to Miss Kline about Mr. Thomas.

Q. Did you overhear the conversation between Mr. Thomas and Miss Kline. A. No.

Q. Did you overhear the conversation between Miss Kline and me? A. No, but I saw you in the store when you bought the candy.

Q. I have no further questions you may inquire.

By Mr. Willett: I only have a couple of questions, it won't take long.

Q. Are you related in any way to Mr. Thomas or to Mrs. Billie Smith Cassidy? A. No.

Q. Would you please state what your official position is? A. I am the supervisor of two stores and a manager of one.

Exhibit 3—Depositions of February 15, 1956.
Mrs. M. Wooten, for Pltf., Cross.

Q. Now will you please state if there ever came a time when one of your employees by the name of Miss Kline brought to your attention any matters pertaining to Mr. Thomas that occurred on the ninth of February? A. Yes.

Q. Now tell us what Miss Kline told you, someone told her? [31] A. Well after Mr. FitzGerald talked with Miss Kline, she told me that he had talked with her—

Q. You were in the store and saw him there. A. Well I was waiting on customers.

Q. Well what did she say he told her? A. Well she was upset, you could see that. He had approached her while he was buying candy. He wanted information like she said and he gave her his card like she said. Now that is improper especially because she was a new girl and customers don't approach my girls for information like that.

Q. Who do you mean by her? A. Beverly, but there are many other girls in the store for me to look after.

Q. Did Miss Kline tell you what Mr. FitzGerald had told her? A. Well it didn't make sense that a man would approach a younger sales girl the way he approached her. She was a new sales girl, part time, like I said. She came back and took her mail order and I thought that he was in a hurry. As soon as she left the store, or he left, she brought both orders to me and said Mr. FitzGerald had told her to make a mental note of any order that Mr. Thomas had made. Now ordinarily we don't make or even look at the address on the sales slips or on the packages and to whom they are going. It is not [32] for us to worry about. Neither do we look at the sender's address especially when we are so busy. This whole thing is unusual.

Q. Did he tell her that he was with the F. B. I.? A. I guess he must have—why was he there. He had no right to ask questions about a customer.

Exhibit 3—Depositions of February 15, 1956.
Mrs. M. Wooten, for Pltf., Cross.

Q. Did Mr. FitzGerald ever contact you personally? A. I don't really know. Someone called me on the phone. His voice was like his. Although I know the man mentioned that he was Inspector Flaherty.

By Mr. FitzGerald: I would like to enter a general objection to this, double hearsay. You should know better then that. This and all of it is incompetent. It is inadmissible, irrelevant, immaterial. Suppose I said I was President Eisenhower. You have given us some double hearsay and now you want to instruct or introduce a 'phone conversation without, identifying time, place, and the identity of the caller.

By Mr. Willett: But I'm going to show that you called her and if you have any objections make them and I'll continue and your exceptions will be noted. Don't interrupt. If you please.

Q. What did Mr. FitzGerald say on the telephone? [33] A. Well like I said I didn't see him and he said it was Inspector Flaherty from New York. He then said that a Mr. Thomas had been in and that I should keep my eyes open if he came in again because if—and he said he didn't want any information from me now, but that there would be a trial later, and if Mr. Thomas sent any packages to Texas, Miss Kline and I would be asked later on about it. He said he didn't want any information now but that he would call later and for me to memorize anything that took place, because it would all be very important.

Q. When did that telephone call take place? A. Around seven or seven forty-five.

Q. Now did you ever talk to anyone else about this case? A. Well someone called me up and talked with one

of the other girls. Though I was not there, but the girl told me that it must be that FitzGerald man again. The other girl then called me to the phone and wanted to speak with Mr. Jones our company lawyer. I told him that Mr. Jones was in Kansas City, but that he was not there now because he was away on a trip, but perhaps that he could be located, and I gave him the telephone number but I don't know whether he was able to get him. He didn't tell me.

Q. Have you ever been served with any notice to take you deposition? [34] How were you served. That is the wrong answer—I mean—why don't you—. A. Through the mail, like I said.

Q. No official of a court served you? A. No.

Q. Now do you know anything about the statement Miss Kline made to the effect that Mr. FitzGerald on nine February 1956, attempted to give Miss Kline money for her troubles? A. Yes, Miss Kline told me that he had told her to keep the change following his purchase of some candy.

Q. How are your sales ladies accustomed to such a thing? Do they receive tips? A. Oh no one ever gives us a tip. We are not allowed to take tips.—Especially following a purchase.

Q. Has anyone ever attempted to tip your sales ladies for a purchase of $3.35? A. Oh no.

Q. Now have you ever seen me or spoken to me before today? A. No not before this?

By Mr. FitzGerald: But she has already stated that she met you pursuant to arrangements to discuss the entire matter at the Willard Hotel. She has already testified about the Willard. The secret

meeting before this hearing. When you went over to meet and talk over the case with [35] Mr. Willett.

A. Oh yes, I forgot we met Mr. Thomas and Judge Willett there first, just like Beverly said.

By Mr. Willett: I have no further questions.

By Mr. FitzGerald: I want to say for the record that I would like to thank these ladies for coming over here today from the Russell Stover Candies and for giving their testimony, especially Mrs. Wooten, who only received a notice through the United States Mail and was not otherwise served. And I also want to know, or have them contact me, if anyone of them ever received a check from this office for coming up here—my personal check, because if they did not I want to forward them each a check to cover their expenses for this long drawn out session.

By Beverly Kline: Yes I received a check from you with your name on it; the man brought it over after you came in the store that same night. He brought it with the papers.

Q. What did the check say? A. Oh it said witness fee on it and it had your name and address and mentioned attorney on it.

By Mr. Willett: I would like to ask one question. Miss Kline [36] you don't work at the Candy company now do you?

A. No.

Q. Where do you work? A. Greyhound Bus lines.

Q. How did you get here today? A. I walked.

Q. It was pretty far wasn't it and you all you got—? A. Oh yes it was.

By Mr. FitzGerald: I would also like to note for

the record that I move to strike all irrelevant, immaterial and incompetent testimony, not previously objected to. I want to emphasize that I as attorney for the plaintiff was the one to call this deposition proceeding. It was called for the purpose of discovery, for the purpose of determining whether or not a heart-shaped box of valentine candy was purchased by Jay Harry Thomas, Jr. and mailed to the defendant Mrs. Billie Smith Cassidy who now appears to have left Virginia and can be found at 6831 Lorna Lane, Dallas, Texas, where she was on February 9, 1956. I also want to state that I don't intend to order and assume the great financial burden for the transcription and reproduction of what appears to be about two hours of fillibuster on irrelevant matters which is of little value to me or to my client. [37] In other words if Mr. Willett wants this record let him assume the cost or reproduction, count me out.

By Mr. Willett: I would also like to make a statement for the record. For the benefit of the court I would like to point out that I am representing Mrs. Billie Smith Cassidy in this hearing. And that is all. I also want to note that a copy of a notice was served on me to appear here today and that when I arrived there was an obvious attempt on the part of Mr. Fitz-Gerald to have his secretary record the transcript of the minutes of this meeting. I want to point out that I voiced the objection that a notary was required to be present during the taking of the testimony. Second objection is that all during the con-

versation some kind of an instrument was playing all that was being taken down. If anything is to be introduced in the court of such a nature, other than the transcript, I will object to it as not being in accord with the rules pertaining to the taking of depositions in the United States District Court and I will then object again. I would also like a copy sent to me of this transcription at the time that you file it with the court. I will then assume responsibility for the cost, providing that it is the standard fee.

[38] By Mr. FitzGerald: What is the standard fee? What rule is that?

By Mr. Willett: I would also like to have inserted in the record your position as a notary public, where you work. On what floor. Whether or not it is the same floor as this floor. What office you are in and whether or not the notary works for Mr. FitzGerald or is in his employ. You can send the transcript to me, John R. Willett, attorney, 1705 Fern Street, Alexandria, Virginia. And you witnesses, you will want to see what has been transcribed and whether or not it is a true report and then sign the transcript, come back here and do so.

(Whereupon the hearing was terminated.)

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[39] CERTIFICATION

I, PAULINE GOEBEL, the officer before whom the foregoing deposition was taken, do hereby certify that during the past thirty days I have made repeated efforts to locate

the witnesses Beverly Kline and Mae Wooten and to have them read, correct, and sign the foregoing transcripts of their testimony. In the case of Beverly Kline I have been advised by Mae Wooten, and therefore believe, that Beverly Kline has not been, and is not now available because of the fact that she is ill, is under the care of a physician and is suffering from a mental disturbance, and that only during the past week her condition was aggravated by an act of suicide committed by a member of her family. In the case of Mae Wooten, I have been advised and therefore do believe that she has not been and is not presently available because she does not have an accurate memory as to what took place on the occasion of the deposition proceeding and that she has been advised to refrain from reviewing the transcript until she has had an opportunity to confer and be advised by Attorney John R. Willett, counsel for the defendant, who according to a report issued by the latter's office, is and has been for the past thirty days, absent from Virginia.

PAULINE GOEBEL.

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[40] CERTIFICATION

I, PAULINE GOEBEL, the officer before whom the foregoing deposition was taken, do hereby certify that the witnesses whose testimony appears in the foregoing deposition were duly sworn by me, and that said deposition is a true record of the testimony given by said witnesses; that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this

deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

PAULINE E. GOEBEL,
(SEAL) *Notary Public*, D. C.,
My Com. Expires May 15, 1961.

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[41] VERIFICATION

MAE WOOTEN being duly sworn says that she is the witness named in the above entitled action; that she has read the transcript of the testimony recorded and knows the contents thereof, and that the same represents a true, accurate, and complete record of the testimony given on the occasion of the taking of her deposition on February 15, 1956, at Suite 1152, National Press Building, Washington, D. C.

MAE WOOTEN.

Subscribed to and
sworn to before me
this ..... day of
..... 1957.

.....
Notary Public.

Exhibit 3—Depositions of February 15, 1956.
Exhibit 1.

Exhibit 1

IN THE
UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF VIRGINIA

———o———

MRS. IRENE R. THOMAS, 10015 Markham Street, Silver Spring, Maryland, *Plaintiff*,

v.

BILLIE SMITH CASSIDY, 521 Ripley Street, Alexandria, Virginia, *Defendant*.

Civil Action No. 1245.

———o———

NOTICE TO TAKE DEPOSITION

Please take notice that the undersigned will take, in the above-entitled action, to be used as authorized by the Federal Rules of Civil Procedure, the deposition of Beverly Kline and Mae Wooten, Russell Stover Company, 1343 F Street, N. W., Washington, D. C., before Pauline E. Goebels, a Notary Public, in the office of Attorney Benedict F. FitzGerald, Jr. in Suite 1152, National Press Building, Washington 4, D. C. on February 15, 1956 at three o'clock p. m.

Executed at Arlington, Virginia this 9th day of February, 1956.

IRENE R. THOMAS

By her Attorneys:
BENEDICT F. FITZGERALD, JR.
1152 National Press Building
Washington 4, D. C.

Exhibit 3—Depositions of February 15, 1956.
Exhibit 1.

(sig.) RAYMOND L. POSTON
1121 Arlington Boulevard
Arlington, Virginia

SERVICE

I certify that service of the above notice together with notice that the original of the above had been filed with the Clerk was made on the defendant by depositing a copy of this notice, addressed to her attorney of record, John R. Willet, Esq., 1705 Fern Street, Alexandria, Virginia, in the U. S. Mail, postage prepaid, and that K. C. Jones, Esq., 1206 Main Street, Kansas City, Missouri, attorney for Russell Stover Company, has also been notified, all on the ninth day of February, 1956.

B. F. FITZ GERALD, JR.
BENEDICT F. FITZGERALD, JR.

Note

Page 394a is at lower right, card 3.

Exhibit 3—Depositions of February 15, 1956.
Exhibit 4.

Exhibit 4.

BENEDICT F. FITZGERALD, JR.
COUNSELLOR AT LAW
National Press Building
Washington 4, D. C.

STerling 3-2057

Notice of Appeal.

(Filed .....)

In Re Denial of Benedict F. FitzGerald for Admission *Pro Hac Vice*

Notice is hereby given this 4th day of June, 1957, that Benedict F. FitzGerald hereby appeals to the United States Court of Appeals for the Fourth Circuit from the judgment of this Court entered on the 13th day of May, 1957 against said appellant Benedict F. FitzGerald.

S/ BENEDICT F. FITZGERALD,
Appellant.

/S/ HUGH R. TANKERSLEY,
126 Poplar Street,
Fairfax, Virginia.

/S/ ALBERT J. AHERN, JR.,
National Press Building,
Washington, D. C.

/S/ JAMES J. LAUGHLIN,
National Press Building,
Washington, D. C.,
Counsel for Appellant,
Benedict F. FitzGerald.

CERTIFICATE OF SERVICE

I hereby certify that I have this 4th day of June, 1957 mailed copy of the Notice of Appeal to John R. Willett, Esq., 1705 Fern Street, Alexandria, Virginia, Counsel for Appellee.

S/ HUGH R. TANKERSLEY

Notice of Appeal--Irene R. Thomas.

Notice of Appeal.

(Filed .....)

In Re Denial of Benedict F. FitzGerald for Admission *Pro Hac Vice.*

Notice is hereby given this 4th day of June, 1957, that Irene R. Thomas hereby appeals to the United States Court of Appeals for the Fourth Circuit from the judgment of this Court entered on the 13th day of May, 1957 against said appellant Irene R. Thomas.

S/ IRENE R. THOMAS,
Appellant.

/S HUGH R. TANKERSLEY,
126 Poplar Street,
Fairfax, Virginia.

/S ALBERT J. AHERN, JR.,
National Press Building,
Washington, D. C.

/S JAMES J. LAUGHLIN,
National Press Building,
Washington, D. C.,
Counsel for Appellant,
Irene R. Thomas.

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of June, 1957 mailed copy of the Notice of Appeal to John R. Willett, Esq., 1705 Fern Street, Alexandria, Virginia, Counsel for Appellee.

S HUGH R. TANKERSLEY

Office - Supreme Court, U.S.
FILED
JAN 2 0 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

No. 735

BENEDICT F. FITZGERALD, Attorney at Law, *Petitioner*

v.

BILLIE SMITH CASSIDY, *Respondent*

In Re Denial of Admission Pro Hac Vice

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATE COURT OF APPEALS FOR THE FOURTH CIRCUIT

ALBERT J. AHERN, JR.
National Press Building
Washington, D. C.

JAMES J. LAUGHLIN
National Press Building
Washington, D. C.

Counsel for Petitioner

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IN THE

Supreme Court of the United States

No.

BENEDICT F. FITZGERALD, Attorney at Law, *Petitioner*

v.

BILLIE SMITH CASSIDY, *Respondent*

In Re Denial of Admission Pro Hac Vice

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Benedict F. FitzGerald, an attorney at law, respectfully prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Fourth Circuit, entered in the above captioned case, affirming the judgment of the United

States District Court for the Eastern District of Virginia.

OPINION BELOW

The United States Court of Appeals for the Fourth Circuit, in an opinion and judgment entered on November 7, 1957, affirmed the judgment of the United States District Court for the Eastern District of Virginia denying the right of the Petitioner Benedict F. FitzGerald to represent the plaintiff, his sister Irene R. Thomas, in a suit then pending in the United States District Court for the Eastern District of Virginia and accompanied the judgment with numerous findings of fact, and conclusions of law (Ap. ap. 81a-104a). The decision below has not been officially reported. A copy of the Opinion is hereto annexed.

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under the provisions of Title 28, Section 1254(1), of the United States Code.

QUESTIONS PRESENTED

1. Was not the Petitioner denied due process of law within the meaning of the Fifth Amendment when the trial judge denied him the right to participate *pro hac vice* and entered numerous findings of fact and conclusion of law which reflected adversely on Petitioner when many of the findings and conclusions related to matter which was transmitted to the trial judge in letter form by one of the parties and when the matter contained therein was not produced in open court and when Petitioner was not allowed an opportunity or notice to meet the charges?

2. Is not the decision of the court below denying the right of the Petitioner to participate in the trial *pro hac vice* and pursuant to Local Rule 9 of the Rules of the Eastern District of Virginia contrary to the recent decisions of this Court in *Konigsberg* v. *The State Bar Association of California,* 353 U.S. 252, and *Schware* v. *Board of Bar Examiners of the State of New Mexico,* 353 U.S. 232 and is not the opinion of the lower court insofar as it adjudicates the rights of an attorney who has been entirely admitted *pro hac vice* contrary to the decision of the United States Court of Appeals for the Third Circuit in *Cooper* v. *Hutchison,* 184 F. 2d 119?

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V, in pertinent part, provides:

> "No person shall be * * * deprived of life, liberty or property, without due process of law."

Rule 9, Sub. 5 of the Local Rules of the United States District Court for the Eastern District of Virginia:

> "A practitioner from another State or the District of Columbia may also be permitted to appear and conduct specific cases in association with a duly qualified member of the bar of this court, if the rules of the Federal Courts of the district in which he maintains an office extend a similar privilege to attorneys of this district, provided, however, that such foreign attorney in all appearances in court shall be accompanied by his resident associate. But, except where a party conducts his own case, no pleading or notice required to be signed by counsel shall be accepted by the clerk unless signed by an attorney who shall have been admitted to practice in this court, who shall be a resident of and maintain an office in this

State, who shall have entered his appearance of record in the case, with the address in the State where notice can be served upon him, and who shall have such authority that the court can deal with him alone in all matters connected with the case. This appearance shall not be withdrawn without leave of the court. Service of notice or other proceedings on him shall be equivalent to service on the parties for whom he appeared. Where a party is conducting his own case he shall file with his pleading a memorandum of one address within the district where notice can be served."

STATEMENT OF THE CASE

The Petitioner in this case is a practicing attorney entitled to practice in this Court, the courts af Massachusetts, the courts of the District of Columbia, this Court and other courts. He applied to the United States District Court for the Eastern District of Virginia pursuant to Local Rule 9 of that court for permission to prosecute an action for his sister *pro hac vice*. Mr. FitzGerald was initially, and pursuant to the provisions of this Rule, allowed to participate in this case (Memorandum of the Court, Ap. ap. 81A-82A). Subsequent thereto, Petitioner's brother-in-law, procured an arrest warrant out of a Police Court and because of the pendency of this proceeding, the Petitioner filed a praecipe withdrawing his appearance. As soon as the arrest warrant had been disposed of with a not guilty adjudication, the Petitioner sought to re-enter the case *pro hac vice*. Further objections were then interposed by the Respondent and her counsel John R. Willett relating to the accuracy of certain depositions that were taken. Accordingly, the trial judge scheduled hearings on

the motion to admit, limited to three issues. They were: (1) Why the depositions were not filed promptly; (2) What if anything the Petitioner had to do with them not coming over and (3) What was the accuracy of the depositions (Ap. ap. 161A). After hearing extensive testimony on these issues the Trial Court entered a judgment denying Petitioner's admission *pro hac vice* and accompanied it with adverse findings of fact A (Ap. ap. 99a) B (Ap. ap. 100a) E Ap. ap. 101-102a) F (Ap. ap. 102-103a) all of which petitioner had not notice of, some of which were referred to in an inflammatory letter addressed by the Respondent to the trial judge (Ap. ap. 17a). This letter which was not served on petitioner is referred to in the trial judge's Memorandum Opinion (Ap. ap. 84a). The trial judge wrote a Memorandum Opinion (Ap. ap. 81A through 99A), entered findings and conclusions (Ap. ap. 99A through 103A) and judgment (Ap. ap. 103A through 104A) denying the Petitioner Benedict F. FitGerald, Esq., the right to participate as counsel *pro hac vice*. Argument was had in the United States Court of Appeals for the Fourth Circuit and on November 7, 1957 (R. 4) the Court of Appeals for the Fourth Circuit entered an Opinion affirming the judgment of the United States District Court. (R. 4, 5)

REASONS FOR GRANTING CERTIORARI

I.

A denial of admission *pro hac vice* to a practicing attorney in good standing when accompanied by prejudicial findings of fact, reflecting adversely upon him entitled him *as a matter of right to appellant review of each adverse finding* and the proceedings in this

case violated due process of law when it was established that one of the parties to the litigation had by letter to the trial judge transmitted inflammatory matter which reflected adversely on the Petitioner and which *was referred to by the trial court in its Memorandum Opinion and Judgment denying Petitioner's admission pro hac vice.*

Although the Petitioner was called upon to meet three simple issues with respect to the filing of certain depositions, the record shows that the trial judge in his judgment transcended these three issues and entered Findings of Fact and Conclusions of Law on issues upon which the Petitioner had not received notice. As such, these findings deprived the Petitioner of procedural due process. *Earle* v. *McVeigh*, 91 U.S. 503; *Goldsmith* v. *U. S. Board of Tax Appeals*, 270 U.S. 117, and *Joint Anti Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123. The trial judge, in his Memorandum Opinion, made reference to the letter addressed to him by the Respondent. The derogatory nature of this letter is found in the record (Ap. ap. 17A to 19A). Since the receipt of this inflammatory matter caused the trial judge to refer to it in its opinion and make certain findings which were adverse to the Petitioner, and which were beyond the scope of the hearing for which the Petitioner was on notice, the trial judge should have invoked the doctrine announced by Justice Frankfurter in *Public Utilities* v. *Pollak*, 343 U.S. 451, 72 S. Ct. 813, and disqualified himself.

We feel that a substantial constitutional issue is presented by this record for if a party to litigation can foist upon a trial judge derogatory matter through the vehicle of the mails and that *matter is in anywise*

referred to in an opinion or judgment of the court as a basis for an adverse finding, the prejudicial nature of that transmission is manifest and due process as envisaged in the Fifth Amendment is automatically vitiated.

The Petitioner thus was denied due process of law in his application for admission, he was prejudiced by the transmission of the letter as manifested in the trial judge's ruling and this Court, in the interest of protecting procedural due process and its supervisory control over proceedings in Federal courts should grant the writ of certiorari.

II.

This Court recently reversed and remanded decisions of the State Courts of California and Nevada where applicants had been denied admission to practice for reasons which this Court on the record considered patently insufficient, thus depriving them of due process of law and equal protection of the laws. *Konigsberg* v. *State Bar of California,* 353 U.S. 252, *Schware* v. *Board of Bar Examiners of the State of New Mexico,* 353 U.S. 232.

In this case the Petitioner was an attorney in good standing and the sole basis for conducting hearings on whether he was to be admitted was the question in the trial judge's mind as to the delay in filing certain depositions, as to whether the Petitioner in anywise delayed the filing of said depositions and the accuracy of said depositions (Ap. ap. 161a). There was an abundance of testimony introduced fully explaining the circumstances surrounding the deposition and all representations made by the Petitioner. There was an abundance of character testimony from such in-

dividuals as the Honorable John W. McCormick, (Ap. ap. 78a-79a) the Honorable Foster Furcolo (Ap. ap. 80a-81a) and the late Honorable Henderson Lanham (Ap. ap. 75a) attesting to the good character of the Petitioner. With all these facts before the court, the court denied the Petitioner the right to proceed in findings which we suggest are not only clearly erroneous with the meaning of *United States* v. *U. S. Gypsum Co.*, 333 U.S. 364, but the effect of said judgment is to deprive the Petitioner of due process of law. This Court stated in the Konigsberg case:

> "A lifetime of good citizenship is worth very little if it is so frail that it cannot withstand the suspicions which apparently were the basis for the Committee's action."

This record presents an attorney in good standing not only denied the right to practice *pro hac vice* but prejudicial with findings of fact of which he had no notice and opportunity to be heard.

We also suggest to the Court that since the Petitioner was originally admitted *pro hac vice* as reflected in the trial judge's opinion, the decision of the court below is contrary to the decision of the Third Circuit in *Cooper* v. *Hutchison*, 184 F. 2d 119. That decision construed a rule of the State Court of New Jersey very similar to Local Rule 9 in the present case and the Third Circuit, in affirming the right of the attorney to continue in the case *pro hac vice*, stated:

> "While admission pro hac vice is stated in the rule to be in the discretion of the court, the rights and duties of an outside lawyer, once so admitted, appear to be the same as those of a local lawyer."

In the light of the above, the Petitioner was denied substantive due process by the findings and judgment of the court below and this Court should grant a writ of certiorari.

ALBERT J. AHERN, JR.
National Press Building
Washington, D. C.

JAMES J. LAUGHLIN
National Press Building
Washington, D. C.

Counsel for Petitioner

Per Curiam Opinion

Filed November 7, 1957

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 7486

IRENE R. THOMAS, and BENEDICT F. FITZGERALD,
Appellants,

v.

BILLIE SMITH CASSIDY, *Appellee.*

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT ALEXANDRIA

(Argued October 22, 1957. Decided November 7, 1957.)

Before PARKER, Chief Judge, and SOPER and HAYNSWORTH, Circuit Judges.

Albert J. Ahern, Jr., (James J. Laughlin on brief) for Appellants. No appearance for Appellee. At the request of the Court John R. Willett argued.

PER CURIAM:

This is an appeal by an attorney at law from an order refusing him permission to appear pro hac vice in a case pending in a court before which he had not been admitted to practice. The attorney was not a citizen of the state

where the court was held and had not been admitted to practice in either the state or federal courts of that state. The judge denied him the right to appear in the case on the ground that he had been guilty of unlawyerlike conduct in connection with the case in which he wished to appear and which was being prosecuted by his sister as plaintiff.

It is well settled that permission to a non resident attorney, who has not been admitted to practice in a court, to appear pro hac vice in a case there pending is not a right but a privilege, the granting of which is a matter of grace resting in the sound discretion of the presiding judge. 5 Am. Jur. p. 572; *Manning* v. *Roanoke & T. R. Co.* 122 N. C. 824, 28 S. E. 963; *Youmans* v. *Hanna* 35 N. D. 479, Ann. Cas. 1917E 263; Note 24 L.R.A.(N.S.) 754. There is grave doubt whether the denial of such permission is appealable, since what is denied is not a right but a mere privilege; but assuming that the matter is properly before us for review, we would not be justified in holding that the findings of the judge below were clearly wrong or that there was any abuse of discretion on his part.

Affirmed.